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THE

CLERGYMAN'S LEGAL HANDBOOK,

AND

CHURCHWARDEN'S GUIDE.

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THE

Clergyman's Legal Handbook,

AND

CHURCHWARDEN'S GUIDE;

BEING A

MANUAL OF THE LAWS AFFECTING THE RELATIVE RIGHTS, POSITION, AND DUTIES OF THE CLERGY AND THEIR PARISHIONERS.

INCLUDING THE LAW APPLICABLE TO NEW PARISHES AND ECCLESIASTICAL DISTRICTS.

BY

JAMES MURRAY DALE.

FIFTH EDITION.

EDITED BY

CECIL C. M. DALE, Esq., of Lincoln's Inn, Barrister-at-Law.

SEELEY, JACKSON, AND HALLIDAY, FLEET-STREET,
LONDON. MDCCCLXIX.

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TO THE REVEREND

THOMAS DALE, M.A.,

(*Canon Residentiary of St. Paul's Cathedral,*)

THE PRESENT EDITION

OF

THIS WORK

IS AFFECTIONATELY DEDICATED

BY HIS SONS

JAMES MURRAY DALE

AND

CECIL C. M. DALE.

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PREFACE TO THE FIFTH EDITION.

SINCE the last edition of this book was published many important alterations have been made in the Laws of the Church, and several important decisions have been pronounced explanatory of those laws as already existing. The substance of these alterations and explanations, so far as they affect the Clergy and Churchwardens in the ordinary discharge of their duties, will be found in the following pages.

In the present edition much practical matter has been inserted, which the extended experience of the Author, acquired as honorary solicitor to the Church Institution and other important Church bodies, has taught him is needed for the guidance of the Clergy, of Churchwardens, and of Churchmen at large.

The best acknowledgments of the Author and

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Editor are due to the numerous correspondents who have favoured them with suggestions, and in particular to Mr. Charles Lightoller, of Manchester, for much valuable information.

Great care has been taken to verify the References in this edition, and an Index of Abbreviations has been added. It is hoped that by these means the authorities cited will be rendered accessible to general readers.

It has been found requisite to omit in many instances the *names* of cases, in order to confine the volume as nearly as possible within its original dimensions without omitting other more important matter.

A notice of the Charitable Trusts Act and the Endowed Schools Act of last session (which passed too late to be inserted in the body of the work), together with the Regulations of the Ecclesiastical Commissioners relating to grants out of the common fund, will be found in the end of the work.

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INDEX OF ABBREVIATIONS.

A. & E.	Adolphus & Ellis's Reports.
Add.	Addams' Reports.
B. & Ad.	Barnewell & Adolphus' Reports.
B. & Ald.	Barnewell & Alderson's Reports.
B. & C.	Barnewell & Cresswell's Reports.
B. & S.	Best & Smith's Reports.
Beav.	Beavan's Reports.
Bing.	Bingham's Reports. N. C., New Cases.
Burn.	Burn's Ecclesiastical Law, 9th edition.
Can.	Canons.
C. B. N. S.	Common Bench Reports, New Series.
Co. Litt.	Coke upon Lyttelton.
Com. Dig.	Comyn's Digest, 5th edition.
Cons. Rep.	Consistory Reports, Haggard.
Cripps.	Cripps' Laws of the Clergy, 4th edition.
Crui. Dig.	Cruise's Digest.
D. & S.	Drewry & Smale's Reports.
De G. & S.	De Gex & Smale's Reports.
Degge.	Degge's Parson's Counsellor.
E. & B.	Ellis and Blackburn's Reports.
East.	East's Reports.
E. B. & E.	Ellis, Blackburn, and Ellis's Reports.
Exch.	Exchequer Reports.
Gibs.	Gibson's Codex.
Godb.	Godbold's Reports.
Hagg. C. R.	Haggard's Consistory Reports.
——— Ecc.	Haggard's Ecclesiastical Reports.
Hawk.	Hawkins' Pleas of the Crown.
Hodg.	Hodgson's Instructions.

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H. L. C.	House of Lords' Cases.
Inst.	Coke's Institutes.
Jur., N. S.	Jurist, New Series. O. S., Old Series.
Lee.	Lee's Cases, temp. Lord Hardwicke.
L. J.	Law Journal. Q. B., Queen's Bench. C. P., Common Pleas. Exch., Exchequer. Ch., Chancery. M. C., Magistrates' Cases.
Lord Ray.	Lord Raymond's Reports.
L. T., N.S.	Law Times, New Series
Lynd.	Lynwoode's Provinciale.
Madd.	Maddock's Reports.
M. & S.	Maule and Selwyn's Reports.
M. & W.	Meeson & Welsby's Reports.
Mer.	Merivale's Reports.
Moore P. C.	Moore's Privy Council Reports.
N. R.	New Reports.
Phill.	Phillimore's Reports
Prid.	Prideaux's Churchwarden's Guide, 11th edition.
Q. B. R.	Queen's Bench Reports.
Rob.	Robertson's Ecclesiastical Reports.
Rog.	Rogers' Ecclesiastical Law.
Russ.	Russell's Chancery Reports.
Salk.	Salkeld's Reports.
Shaw P. L.	Shaw's Parish Law.
Sid.	Siderfin's Reports.
Smith's Par.	Toulmin Smith's Parish.
Steer.	Steer's Parish Law, 3rd edition.
Steph. Bl.	Stephens' Blackstone, 5th edition.
Stra.	Strange's Reports.
Vent.	Ventris's Reports.
Ves.	Vesey's, jun., Reports.
Ves. sen.	Vesey's, sen., Reports.
Vin.	Viner's Abridgement.
Wats.	Watson's Clergyman's Law.
Wils. R.	Wilson's Reports.
W. R.	Weekly Reporter.

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THE

LAWS AFFECTING THE CLERGY, CHURCHWARDENS, ETC.

CHAPTER I.

Of Convocation.

Queen's Supremacy.

The Sovereign is head of the Church (by statutes 26 Hen. VIII. c. 1, and 1 Eliz. c. 1), and as such convenes, prorogues, restrains, regulates, and dissolves all ecclesiastical synods or convocations. The two Convocations for the provinces of Canterbury and of York are in the nature of a Parliament, all the lower orders of clergy having representatives therein, who share with the dignitaries the right of making canons for, and, in *theory*, of taxing the possessions of, the Church (Cripps, 23). In the primitive Church the laity were present at all synods.

Summons Convocation.

Who are members of.

All Deans and Archdeacons are members of the convocation of their province; each chapter sends one proctor or representative, and the beneficed parochial clergy in each diocese in Canterbury send two proctors; but on account of the small number of dioceses

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in the province of York, each *archdeaconry* there elects two proctors. In York, the convocation consists only of one house; in Canterbury, two houses; the archbishop and bishops forming the upper, and the lower consisting of deans, archdeacons, and the proctors for the chapters and for the parochial clergy.

Upper House.
Lower House.

Powers of.

Convocation is a Court (4 Inst. 322), and can only be summoned by the King's writ (3 Com. Dig. 148). It has jurisdiction *in merè spiritualibus* (3 Com. Dig. 149). It cannot, however, make any canons, or even confer[1] for that purpose, without licence from the Sovereign; and even then canons must not be repugnant (*a*) to the King's prerogative; (*b*) to the common law; (*c*) to the statute law; nor (*d*) to any custom of the realm (2 Inst. 599, 647, 653; 2 Atkins' Reports, 662; 2 Vent. 44). Subject to these limitations, canons made in Convocation bind the clergy, but not in temporal matters (20 Hen. VI. 13; Middleton *v.* Croft, Rep. temp. Hardwick, 333).

It would seem that convocation cannot alter such of the canons as are declaratory of the law of the land without an Act of Parliament; and as the Act of Uniformity makes the Book of Common Prayer and the rubric part of the statute law, an Act of Parliament is necessary to any alteration of *them* (Strange, 1056); nor can convocation make any canon *altering the law* as against either clergy or laity without an Act of Parliament. (*Ib.*)

[1] Convocation may pass resolutions recommending that an alteration of the law, of which the canons are declaratory, be made by Act of Parliament. As to the necessity for the royal licence, see Cardwell's Synodalia, preface, p. ix.

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Convocation may declare what opinions are heretical, but it is doubtful whether it can convene and convict the heretic (1 Hawk. c. 26. § 3; 1 W. & M. c. 18, § 11; 31 Geo. III. c. 32, § 3; 53 Geo. III. c. 160).

It also has jurisdiction to make fasting days, holy days, &c. (3 Com. Dig. 148; and see Wheatly, Com. Prayer).

Consulted by Parliament.

The Lords and Commons used formerly to send to Convocation for advice in spiritual matters.

Since the 16 & 17 Car. II. c. 17, the clergy have not taxed themselves in convocation; on the other hand, they vote for knights of the shire in Parliament, a privilege that did not formerly belong to them. (See § 36.) Convocation, though still regularly summoned, has ceased in fact to exercise any legislative power. (See Burn, Eccl. Law, Convocation; and Law of Convocation, Pearce, published by Sweet.)

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CHAPTER II.

Of the Canon Law.

Legatine. Provincial

The Canons are ecclesiastial laws, consisting of (*a*) *legatine* constitutions, or ecclesiatical laws made in national synods; and (*b*) of *provincial* constitutions, or decrees of provincial synods. (See Reeves, Hist. Eng. Law, vol. i. p. 66, and Burn, E. L. pref. p. xxii.)

By the 25th Henry VIII. c. 19, and 1st Eliz. c. 1, it was enacted, that the canon law should be reviewed (which was never done), and that *until* such review, all canons, *then* existing, *and* not repugnant to the law of the land or the king's prerogative, should still be used and executed. *Such* canons, therefore, are binding on laity and clergy (Strange, 1060). Canons made since that Act, and not sanctioned by statute, are of no force as regards the laity (Steph. Blackst. vol. i. p. 67).

Which bind the laity.

Which do not.

The 141 canons enacted in 1603 (the first year of King James) have been held *not* to be binding on the laity, "unless where declaratory of the ancient usage and law of the Church of England." (*Ib.*) They, however, bind the clergy (1 Burn, Eccl. Law, pref. xxx.). They were collected out of the preceding canons, and constitute the present standard of the Established Church.[1] (*Ib.* n. *a.*, and see 29 Law Journal, N. S. C. P. 354; 8 Jurist, N. S. 1061. See English Church Canons by Davis. Sweet.)

[1] By virtue of Royal license the 36th, 37th, 38th, and 40th Canons have been altered by convocation in accordance with the Clerical

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CHAPTER III.

Of the Clergy.

Division (*a*).—*Generally.*

The Clergy are such only as are admitted into Holy Orders; and the three orders are Bishops, Priests, and Deacons (Blackst.). They must be ordained according to the form in the Book of Common Prayer (which see); and no person ordained by a foreign bishop can officiate here without permission from the archbishop, or be admitted to a benefice without the permission of both archbishop and bishop (59 Geo. III. c. 60, § 3). None can be ordained deacon under twenty-three years of age, or priest under twenty-four years (13 Eliz. c. 12, and 44 Geo. III. c. 43), and ordination at an earlier age is void (Cripps, p. 10). The Archbishop of Canterbury might formerly admit deacons earlier by faculty or dispensation, but it is not so now.

Of the Clergy generally.

Ordination. Title to Orders.

A man ought regularly to be deacon for a whole year before he is ordained priest, but the bishop may ordain sooner if he please (Rubric).

The bishop is the sole judge as to the candidate's moral and personal qualifications (Cripps, p. 9); but the candidate, whether for deacon's or priest's orders, is to produce testimonials either from his college,

Subscription Act, 1865 (28 & 29 Vict. c. 122). The 29th Canon has also been altered, but such alteration has not been confirmed by Act of Parliament.

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or of three or four ministers, together with the testimonials of other "credible persons," who have known him three years previously. If he has left college, notice of his intended ordination (known as a "*Si quis*") must be published in the church of the parish in which he has usually resided, five weeks before the day of ordination.

Title to Orders. This may be either (*a*) a presentation to some ecclesiastical preferment in the diocese then vacant, or (*b*) a certificate that he is either provided of some church in the diocese, with cure of souls, or of some minister's place, vacant in the cathedral or some other collegiate church in the diocese, or that he is a Fellow or chaplain in Oxford or Cambridge; or [1] M.A. of five years' standing, living in the University at his own charge; or when the bishop himself intends to admit him to some benefice or curacy (Can. 33).

Notice before. Notice in writing of the intention to apply for orders must be given to the bishop (varying, in different dioceses, from three to twelve months), stating the candidate's name, age, college, degree, residence, and references as to fitness.

Degree. Further, the candidate must have taken some degree of school in Oxford or Cambridge; or, at the least, be able to yield an account of his faith in Latin, or have special gift or ability to be a preacher (13 Eliz. c. 12).

Legal papers. The following papers should in ordinary cases be transmitted by candidates for orders to the bishop's secretary one month previous to ordination (*a*) for deacon's orders, 1, Certificate of Baptism, or statutory declaration by the candidate's father, mother, or next

[1] But this is not, in practice, allowed as a sufficient title.

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friend, to prove the place, day, and year of his birth and baptism; 2, Certificates as to university degree, theological examinations, etc.; 3, College testimonials; 4, Testimonial for the time elapsed since the candidate left college (see form in Appendix G.); 5, *Si quis*, attested by the officiating minister and churchwarden (see Appendix G.); 6, A nomination to a curacy according to one or other of the forms in Appendix G. (*b*) The papers for priest's orders are, 1, Testimonial for the time since the candidate's ordination as deacon; 2, *Si quis*, as above; 3, Nomination to a curacy or presentation to a benefice, unless the candidate be already licensed in the diocese.[1]

Subscription.

Under the Clerical Subscription Act, 1865, 28 and 29 Vic. c 122, § 4, every candidate for ordination is required to subscribe the declaration of assent contained in that Act (§ 1), and to take the oath of allegiance, the form of which has been recently altered by the 31 and 32 Vic. c. 72, § 8. Forms of these will be found in Appendix G.

In which Diocese.

Exceptions as to.

No bishop shall ordain any who is not of his own diocese, unless (*a*) he be a Fellow, or in right as a Fellow of some college, or (*b*) bring letters dimissory from his own bishop (Can. 34). In the former case the candidate should nevertheless seek orders from the bishop in whose diocese the college is. (In cases of vacancies of the sees and peculiars, see Cripps, p. 15.)

Functions abroad.

Persons, including aliens, may be ordained *for*

[1] The above information and the forms, etc., in Appendix G., are taken from the London Diocese Book, published by Messrs. Rivingtons, a valuable and inexpensive little book which all candidates for ordination would do well to procure.

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functions abroad only by the Bishop of London (or other bishop appointed by him), without the oath of supremacy (24 Geo. III. c. 35), and for the *Colonies*, by the archbishops, or the Bishop of London, or bishop appointed by them, if found specially qualified on examination (59 Geo. III. c. 60, § 1).

For the Colonies.

Persons so ordained cannot officiate in England without the consent of the bishop of the diocese (*Ib.* § 2; and see 3 & 4 Vict. c. 33, § 1). As to Scotch and American clergy, see Chap. XI. § 1.

Ordinations are generally on the Sundays next following the Ember weeks.

Fees.

No fees exceeding 10*s.* for the license shall be taken for admitting to holy orders (Can. 135). There are incidental expenses of about 50*s.* The letters of orders are to be produced to the bishop at his first visitation after admission (Can. 137).

Orders cannot be relinquished.

"No man being admitted a deacon or minister can voluntarily relinquish the same" (Can. 76); and "though he become a dissenter, he is subject to canonical obedience to his bishop for what he may do according to the rites and ceremonies of the Church of England" (Barnes *v.* Shore, 8 Q. B. R. 640, per Lord Denman), notwithstanding the Toleration Acts.

Deacons.

A deacon may perform all the offices and duties enjoined in the Liturgy except pronouncing the absolution and the blessing, consecrating the elements and delivering the bread, administering *adult* baptism, and perhaps also solemnizing matrimony (Burn, Eccl. Law 3, p. 59). He may be a curate to a beneficed clergyman, a lecturer in a parish church, or chaplain in a private family; but he cannot be *admitted* to a benefice,

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or take any ecclesiastical preferment, although he may be *presented* to a living (13 & 14 Car. II. c. 4, § 14).

Privileges.

A clergyman is exempt from serving on a jury; nor can he be compelled to serve any temporal office; he may not be arrested in civil suits during his attendance on, or in going to, or returning from, divine service, or in carrying the sacrament to sick persons (Blackst. by Stephens, vol. iii. p. 4), or in attending visitations. A clergyman (whether rector, vicar, or curate, or only temporarily acting as curate) is free from toll when on parochial duties, both going to or returning from visiting any sick parishioner, or on other his parochial duty within his parish, although the toll-gate be out of the parish (3 Geo. IV. c. 126, § 32; Temple *v.* Dickenson, 32 Law Times, p. 90, Q. B.; 28 Law J. M. C. 10). If *bonâ fide* going to visit a sick person, he does not lose his exemption by taking his wife and daughters with him. (Layard *v.* Ovey, 37 L.J. N.S. M.C. p. 146). The acts of clergymen, as such, do not justify free comments, as in the case of other public men (15 M. & W. 319); and if the matter is libellous, the publicity of the clergyman's position or conduct is no justification of the libeller. But this apparently does not extend to their acts as parish officers, dealing with parish property; see the case of Kelly *v.* Tinley, 13 L.T. N.S. p. 255, where it was held that a dispute between an incumbent and a churchwarden, as to the use to which the former had put the vestry, was matter of public comment. As to the duty of a clergyman to disclose facts revealed to him by way of confession, see Appendix H.

Disabilities.

A clergyman cannot be elected a Member of Parlia-

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ment (41 Geo. III. c. 63), or Councillor, or Alderman (5 & 6 Will. IV. c. 76, § 28); or appointed a Justice of the Peace, saving, however, the rights of the Crown, which renders the restriction null (3 Burn, 343, Cripps, p. 67). He cannot (1 & 2 Vict. c. 106, § 28), whilst holding any cathedral preferment, or benefice, or curacy, or lectureship, or whilst licensed to or otherwise allowed to perform any ecclesiastical office, farm on his own account more than eighty acres, without the bishop's special written license; or engage in, or carry on, any trade or dealing for gain or profit (§ 29), unless with six other partners or more, or unless his share in the undertaking come by inheritance or representative title, and then not as director or manager, or in person (§ 29): but he may be a schoolmaster, and so deal in books; or a director, partner, or shareholder in a benefit or insurance society; and may sell minerals, etc., the produce of his own land; but not in person, if the sale be in open market: he may also be a *member* in a banking copartnership (4 Vict. c. 14), but not a manager or director, or personally act therein. (See further "Stephens' Laws of the Clergy" *in loc.*)

Farming.

Trading.

A clergyman so illegally trading may be suspended for a year for the first offence; for the second offence, so long as the judge shall think fit; and for the third offence he shall be deprived (1 & 2 Vict. c. 106, § 30); but his contracts are, nevertheless, valid, and such a trading renders him subject to the bankrupt laws[1] (4 Ell. & Bl. 917).

[1] Clergymen and other non-traders may now be made bankrupt under the 24 & 25 Vict. c. 133.

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The several Divisions of the Clergy with which we have to do are Rectors, Vicars, Perpetual Curates, Lecturers, Chaplains, and Stipendiary Curates.[1] Several Divisions

"Rector" and "Parson" are synonymous terms. The parson is a corporation sole, and has for his life the freehold of the parsonage house, glebe, and tithe, and other dues, when not *appropriated* (Co. Litt. 300). Originally, the Rector could authorize a Vicar to officiate under him: thus two clergymen were instituted to the same church, and had cure of souls. Out of this sprang sinecure rectories; but these, under the 3 & 4 Vict. c. 113, § 48, are in gradual course of extinction as they become vacant. Rectors.

Vicars were originally mere stipendiary curates, appointed by the spiritual corporation who held the revenues of the benefice, and generally were of their number, and removable at their pleasure. However, by the 4th Hen. IV. c. 12, they were declared to be not so removable; they were to be regularly instituted and inducted, and to be sufficiently endowed. The endowment under this statute was generally a portion of the glebe and the small tithes (Cripps, 155). Vicars.

A Rector, then, generally has all the dues within his parish; a Vicar has part only, the better portion belonging to the Rector or appropriator.

During a vacancy of the vicarage, it may be united to the rectory by the Ordinary and the Rector (Degge, 246).

Perpetual Curates (most of whom have now obtained Perpetual Curates.

1 We may mention, that upon a clergyman being consecrated a bishop, all his preferments in general become void, and the Crown presents to them (Cripps, 85).

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the title of vicar under the recent statute, 31 & 32 Vic. c. 117, see Appendix A.) appear in their origin to have been those who did not become Vicars under the 4th Hen. IV. c. 12 (Rogers's Eccl. Law, p. 56-n.). After the dissolution of the monasteries, the lay impropriators had to provide for the cure of souls, and nominated curates, who were licensed to the cure, and thus became *perpetual*, *i.e.*, only removable by revocation of the license. By the 1st & 2d Vict. c. 106 (the Benefices Pluralities Act), Perpetual Curacies are declared to be benefices; they are not, therefore, tenable with other benefices, and the incumbents are liable, as such, for dilapidations (see "Dilapidations").

(a) Ancient. A Perpetual Curacy of ancient foundation may be distinguished from a mere ancient chapelry by its possession of parochial rights—as rights of baptism and burial, the non-liability of the inhabitants in its district to be rated to the mother-church, and the right of the incumbent to small tithes and surplice-fees (2 Ves. Sen. 427).

It is apprehended that these perpetual curacies have almost without exception become "vicarages" under the recent statute.

(b) Modern. The incumbents of the various ecclesiastical parishes and districts under the Church Building Acts and New Parishes Acts were also formerly, and many of them still are, Perpetual Curates; they are bodies corporate, with perpetual succession, and therefore may have grants made to them and their *successors* in office; and the freehold of their churches, burial-grounds, etc., vests in them. They are licensed and removable as other Perpetual Curates.

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Inasmuch as the alteration introduced by the 31 & 32 Vic. c. 117 is expressed to be "for the purpose of style and designation" only, it would seem that perpetual curates converted into vicars by that Act will be licensed and removable as before.

Private Chaplains.

All Peers, as well as certain Commoners, are allowed by law (according to their rank and office) to "retain" one or more *private Chaplains*. Thus an archbishop may have eight; a duke or bishop, six; marquis or earl, five; a viscount, four; the Lord Chancellor, three; a baron, three; the Master of the Rolls, the King's Secretary, Treasurer, Dean of the Chapel Royal, and Almoner, each of them two; the superior judges, the Chancellors of the Exchequer and the Duchy of Lancaster, the Attorney and Solicitor General, etc., each of them one chaplain. (See Can. 71, Barnes *v.* Shore 1, Rob. 382, and 18 & 19 Vict. c. 86, § 1, as to officiating in private houses.)

Union Chaplains

These are appointed under the Poor Law Amendment Act (4 & 5 W. IV. c. 76, §§ 46 & 109), and are officers of the union as defined by that Act (§ 109). The Poor Law Commissioners may order the guardians of a union to appoint a chaplain for any workhouse (1 Q.B. 130), and may remove him without any further consent from the bishop or other ordinary (7 L.T. Rep. N.S. 599). A clergyman, lawfully appointed chaplain to a workhouse, may perform the full duties of a chaplain by reading prayers, etc., to the inmates of the union, without the consent of the incumbent of the parish (8 L.T.N.S. 331).

Army Chaplains.

The status of army chaplains has been recently regulated and defined by the 31 and 32 Vic. cap. 8. By this Act the Queen has power, on the recommenda-

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tion of one of her secretaries of state, to convert the precincts of any military station into an extra-parochial place for the purposes of the Act (§ 4), and a chaplain may then be appointed by the Secretary of State to do duty in any chapel within the precinct (§§ 6, 7, 8). The scheme for setting out the precinct must, however, be sent to the incumbent and patrons of the parish in which the station is situated (§ 4).

Lecturers.

Lecturers are "spiritual persons licensed to perform divine service in a parish church at times other than those when it is to be performed by the incumbent or his curate" (Cripps, 159; and see Appendix G.).

The incumbent may object to the appointment of any particular person as Lecturer; and even where the lectureship is endowed, and has an indisputably legal origin, and has been repeatedly filled, the assent of each successive incumbent is necessary before the Lecturer can *officiate* (1 Term Rep., Durnford and East, 333; 2 Eden's Rep. 360); and that, too, although the bishop has licensed the Lecturer (Cripps, 162).

It is, perhaps, doubtful if the incumbent can, *without due reason assigned*, refuse his consent. The bishop may, however, refuse to license, *i.e*, if there be a sufficient reason, otherwise the Court of Queen's Bench would interfere (15 East, 117); and he may revoke his license at any time (2 Curteis, 391).

The Lecturer must be licensed by the bishop of the diocese in which the lectureship is (Can. 36).

By the 28 and 29 Vict. cap. 122, sec. 6, he must, before obtaining such license, make and subscribe the declaration of assent, and the declaration against simony, and take the oath of allegiance in the presence of the

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bishop. He must also take the oath of canonical obedience. For forms of these see Appendix G.

In London the Lecturer is frequently chosen by election, either by the vestry or the chief inhabitants, or the parishioners at large (Rogers's Eccl. Law, 493).

The bishop may, under the 7th & 8th Vict. c. 59, § 1, with the incumbent's consent, compel Lecturers to perform such other ministerial or clerical duties within the parish as he may think proper (and see 18 & 19 Vict. c. 127, § 12).

Stipendiary Curates.

A Stipendiary Curate is a minister who is employed by an incumbent, at a fixed stipend, to assist him, or to officiate for him in his absence, in the parish church, or in a chapel of ease thereto or within his parish.

By the Clerical Subscription Act, 1865 (28 & 29 Vic. c. 122), he must, before obtaining such license (§ 6), present to the archbishop or bishop by whom the license is to be granted the stipendiary curates' declaration (see Appendix G.), signed by himself and by the incumbent of the benefice to which he is about to be licensed. After being licensed he must (§ 8), in the presence of the bishop or his commissary, make and subscribe the declaration of assent, which he is also required again to make in the presence of the congregation on the first Lord's-day on which he officiates in the church which he is licensed to serve.

He must be previously licensed by the bishop in the usual way (see Hodgson's Instructions, pp. 12 and 13). He must also take the oath of canonical obedience (see Appendix G.). He is moreover required to send in his nomination letters of orders and letters testimonial from three beneficed clergymen to the bishop.

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If he remove from one diocese to another, he must obtain, before he serve in the latter, testimonials as to his fitness from the bishop of the former (Can. 48). His rights and duties are regulated by the provisions of the 1st & 2d Vict. c. 106, §§ 75 to 102, which are in effect as follows:—

Compulsory appointment.

The appointment of a curate is compulsory, and the bishop may appoint one absolutely: (*a*) if the incumbent is non-resident, or be absent for a period or periods exceeding altogether three months in any one year without the bishop's consent or a legal exemption; or (*b*) if his curate has died or has resigned, and he neglects for one month to give notice to the bishop; or if he has appointed no successor for four months (in some cases the curate appointed by the bishop is to be resident, § 76); or (*c*) if the bishop shall "see reason to believe that the duties of the cure are not adequately performed," and, upon inquiry, it shall be so reported by a commission of four clergymen of the diocese (one being the rural dean), to whom another (of the diocese) may be added by the incumbent (§77). The incumbent, however, may appeal to the archbishop within one month after requisition made upon him to appoint a curate. (*d*) Whenever the annual value of a benefice exceeds 500*l.*, and the population amounts to 3,000; or though less than 3,000, if there is a second church or chapel of ease in the parish, situate within two miles from the mother-church, with a hamlet or district of 400 persons, although the incumbent may be resident. (*e*) If an incumbent of a benefice with a population exceeding 2,000 has become so since 20th July, 1813, and is non-resident (and in this case the bishop may

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nominate two curates, or a second curate) (§ 85). (*f*) So, also, if a benefice is under sequestration (except for providing a parsonage), and the incumbent does not perform the duties (§ 99), or during a vacancy (§§ 100, 101), or if the incumbent is found lunatic (§ 79). In all these cases the bishop may nominate a curate.

In all cases of compulsory appointment the stipend is fixed by the license, and the bishop can compel payment, if necessary, by monition and sequestration.

If the incumbent is *non-resident*, the bishop fixes the stipend, subject to certain wholesome restrictions, specified in detail in the Act (§ 83).

All agreements for stipends less than those specified by the Act or by the license are utterly void (§ 90).

If an incumbent is non-resident for four months, and has been required to reside by the bishop, the latter may assign the parsonage-house, glebe, etc., rent-free, to the curate.

Fees for Curates' License.

These are generally 13*s.* 6*d.*, and 10*s.* 6*d.* extra for a commission, if issued.

Curate vacating office.

The curate can only quit on giving three months' notice to the incumbent and the bishop, unless with the written consent of the bishop, upon pain of paying the incumbent a sum not exceeding six months' stipend, at the discretion of the bishop (§ 98).

Any incumbent, with the bishop's consent, but not otherwise, may require his curate, if licensed after the 14th Aug., 1838, to quit on six months' notice (§ 95). And if the bishop refuse his consent, a *resident* incumbent may appeal to the archbishop *(ib.)*. The notice must be served on the curate personally, by delivering a copy and producing the original, which must then be

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returned to the consistorial court, with an affidavit of the time and manner of service (§ 112).

Licensed Curate.

The curate's license does not cease on the avoidance of the incumbent; but, after a vacancy, the licensed curate must quit the curacy on six *weeks'* notice from the new incumbent, when admitted or instituted, provided the notice is given within six months from such admission (§§ 95, 96). But in the case of district churches and chapelries, and of churches without districts built under the Church Building Acts, the curate's license continues in force, notwithstanding the avoidance of the living, until revoked by the bishop (1 & 2 Vic. c. 107, § 13; and 8 & 9 Vic. c. 70, § 18).

Revocation of License

The bishop may at any time revoke a stipendiary curate's license (after giving him opportunity to show cause to the contrary), and even for matter not cognizable under the Discipline Act. The curate, however, may, within one month, appeal to the archbishop (1 & 2 Vic. c. 106, § 98), who *must* hear the appeal (5 Jurist, N. S., 958, 522). There is no final appeal to the Privy Council (14 Moore, P.C., 262). So the bishop may revoke the license of a curate of an unconsecrated chapel (2 Curteis, 291).

A licensed curate appoints the parish clerk during a vacancy or the suspension of the incumbent (4 Ell. & Bl. 105), and, it is said, the minister's churchwarden also (2 Strange, 1246; 2 Vent. 41).

Unlicensed Curate.

An unlicensed curate may be discharged according to the terms of the agreement between him and the incumbent. If no written agreement, a yearly engagement would probably be presumed in law. But every curate should be licensed (Can. 48).

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Preachers. The declarations, oaths, etc., to be made and taken by preachers are the same as in the case of lecturers (*supra*, p. 14).

Qualification of Cathedral Clergy. It may be mentioned that by the 3 & 4 Vic. c. 113, § 27, no person is to be capable of receiving the appointment of dean, archdeacon, or canon, until he shall have been six years complete in priest's orders, except in the case of a canonry annexed to any professorship, headship, or other office in any university.

Division *(b)*.—*As to Incumbents.*

Felling trees in churchyards. The incumbent, whether rector or vicar, may fell the trees in the churchyard for the repair of the church; *sed quære* where the rector and vicar are different persons (Cripps, 488). The incumbent alone can give license to bury in the body of the *church*. (See Chap. V.)

Appointment. Every incumbent must be presented, admitted, instituted, and inducted, except in the case of Donatives, *infra*.

Presentation. Presentation is the offering of the clerk to the ordinary by the patron or proprietor, and must be in writing (1 Burn, 137, 149). A deacon, and even a layman, may be *presented*, but he must be in priest's orders before admission (*ib.* p. 103). The patron cannot present himself, but the bishop admits him on his own petition. The bishop examines the person presented (as he may also where the presentee is already in orders), as to age, learning, behaviour, and orders. The presentee may be refused by the bishop for any particular heresy, or vice *malum in se*, or want of learning (1 Burn,

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E. L. 157); or a presentation may be revoked before institution (1 Ves. Sen. 81).

During the vacancy of a see, presentations, etc., may be addressed to the archbishop of the province or guardian of the spiritualities.

Admission and Institution.

Admission follows by the bishop if the presentee is approved; and by *institution* the cure, as to *spirituals*, is committed to him; and he may enter the parsonage and glebe, and take the tithes, but not let them till inducted (Wats. c. 15). On refusal of admission, the clerk can appeal to the archbishop or Privy Council (Gorham *v.* Bishop of Exeter). As to grounds of refusal see 3 Steph. Blackst. pp. 28 and 29. The cure is "full" by institution. A bishop cannot demand before he institutes a testimonial from another bishop in whose diocese the presentee has had cure of souls (29 L. J. 354; 8 Jurist, N. S., p. 1061). The fees on institution to livings are £7 13*s.* 6*d.* and £1 10*s.* extra if a commission is issued. The fees on license to a perpetual curacy are £4 9*s.*, and £1 1*s.* extra if a commission is issued. The *ad valorem* stamp on institutions and licenses to perpetual curacies is put on the presentation and nomination respectively; in the case of collations only it is attached to the instrument itself.

Fees.

Induction.

Induction is the giving actual possession of the *temporalities* of the church, as by tolling the bell, etc. No person can be parson, vicar, etc., or be admitted to any benefice with cure, until twenty-four years of age at least and a deacon (13 Eliz. c. 12, § 3; 44 Geo. III. c. 43, § 1; 3 Burn, 44, 5). Before institution he is required, under 28 and 29 Vic. c. 122, § 5, and 31 & 32 Vic. c. 72, § 8, to make the declarations of assent

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against simony, and take the oath of allegiance, according to the forms in Appendix G.

The archdeacon generally makes the induction, and may be compelled to do so after institution by mandamus, or through ecclesiastical censure (Gibs. 815).

If the church be exempt from archidiaconal jurisdiction, the chancellor or commissary inducts; if a peculiar, the judge of the peculiar.

Induction avoids a benefice previously held (2 Wils. R. 174).

As to the mode of induction, see Hodgs. Instructions, 30.

Donation

In the case of advowsons donative the clerks acquire the living by the patron's deed of gift, without presentation, institution, or induction (Co. Litt. 344 a).

Reading in.

On the first Lord's-day after institution, or such other Lord's-day as the ordinary may appoint and allow, the incumbent must, in his church, publicly read to the congregation the Thirty-nine Articles; and, immediately afterwards, make the declaration of assent (see Appedix G.), adding, after the words "Articles of Religion" therein, "which I have now read before you," as required by the "Clerical Subscription Act, 1865," sec. 7; on *wilful* default whereof he absolutely forfeits his benefice (*ib.*).

It is well to obtain from the churchwardens a certificate of this having been done; a form is supplied by the bishop's secretary.

Collation.

Collation is where the bishop is the patron, when he does not "present," but institutes at once (Steer, 87).

Lapse.

The patron's right to present lapses to the bishop if not exercised for six calendar months from the church

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becoming void, exclusive of the day of avoidance; and so from the bishop to the metropolitan, and from him to the Crown, for a like further delay in each case (3 Steph. Bl. 72).

In some cases the six months run from notice from the ordinary to the patron, of the avoidance; viz., where it occurs with the privity of the ordinary and incumbent, as by deprivation or resignation, and where the bishop refuses to present the nominee of the (lay) patron (2 Burn's Eccl. Law, p. 355) for some matter of an ecclesiastical, not temporal, cause, as, for instance, heresy, want of learning. If the patron be an *ecclesiastic*, he is not entitled to any notice of refusal (Wats. c. 12; 15 East, 143), whether it be on ecclesiastical or temporal grounds.

By the Clerical Subscription Act, 1865 (28 & 29 Vic. c. 122), no title to present by lapse is to accrue by reason of any forfeiture from non-compliance with the provisions of sec. 7, as to reading in (*supra*, p. 21), until the ordinary has given six months' notice thereof to the patron.

Donatives do not lapse, but the bishop can compel the patron to fill them (2 Burn's E. L. 363).

Avoidance. This is either by (*a*) death, (*b*) by taking another benefice with cure of souls (1 & 2 Vic. c. 106, and 13 & 14 Vic. c. 98), (*c*) by consecration to a bishopric, (*d*) by resignation when accepted by the ordinary (Cro. Jac. 198), or (*e*) by deprivation by some civil or ecclesiastical offence (3 Steph. Bl. 37).

Cure of Souls. The incumbent of every benefice with cure has *exclusive* cure of souls. It is an ecclesiastical offence for any clergyman publicly to read prayers or perform

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divine offices according to the rites of the Church of England in any benefice without the license of the bishop, and also the consent of the incumbent, unless authorized under the Church Building or New Parishes Acts or other Act of Parliament (Can. 71 ; 15 East, 142 ; Freeland *v.* Neale, 1 Rob. 643) ; but see 18 & 19 Vic. c. 86, § 1, making exceptions in the case of services performed by the incumbent or curate, or in a private dwelling house, or only occasionally in any building not usually appropriated for divine worship.

Duties in relation to Registers.

Registers are kept throughout the country of births, baptisms, marriages, deaths, and burials. The clergy are responsible only for the registry of baptisms, marriages, and burials.

They are custodes of the registers, and should not part with them, or suffer them to be inspected unless in their presence.

The rector, vicar, curate, or officiating minister is bound to make and keep a register of all baptisms and burials within his parish or chapelry, each in a separate book (52 Geo. III. c. 146), and of such marriages as are solemnized *in facie rubricæ*.

Copies of the register of baptisms and burials are to be sent annually to the registrar.

The registrar supplies the register book of marriages in duplicate, and one of the duplicates is to be sent quarterly to the superintendent-registrar, and by him to the general register office. (See also Chap. XI. § 2.)

Every rector, vicar, or curate who shall have the keeping of any register book must at all reasonable times allow search to be made therein.

Extracts from.

Copies of extracts from parish registers signed by

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the rector, vicar, or curate of a parish are receivable in evidence in courts of justice under the 14 & 15 Vic. c. 99, § 14. (See 22 L. J. Ch. 177, and 25 L. J. Ch. 688.)

The fees are—for every search extending over a period not more than one year, one shilling; sixpence additional for every additional year; and two shillings and sixpence for every single certificate (6 & 7 Wm. IV. c. 86, § 35).

Place of custody of Register.

This must be in a dry, well-painted iron chest, to be provided by the parish, and to be kept locked in some dry, safe, and convenient place within the usual place of residence of the incumbent (if within the parish or chapelry), or in the parish church or chapel (52 Geo. III. c. 146, § 5).

Errors.

As to correction of errors, see "Marriages," Chap XI. sec. 3, div. 1; and Chap. XX. div. 2.

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CHAPTER IV.

Of Parishes.

Parishes and their Subdivisions.[1]

England is, for ecclesiastical purposes, divided into two Provinces, each Province into Dioceses, each Diocese into Archdeaconries, each Archdeaconry into Rural Deaneries, each Deanery into Parishes. With the last division alone we have now to do.

Parishes; (*a*) Original, or (*b*) Statutory.

Parishes are either (*a*) Ancient or Original Parishes; or (*b*) Statutory Parishes, *i.e.* Parishes formed either under a Special Act of Parliament, or under General Acts, as the Church Building Acts and the New Parishes Acts. Those formed under Special local Acts are generally made parishes for civil as well as ecclesiastical purposes; those under the General Acts are made parishes for ecclesiastical purposes only.

Statutory Parishes; Civil or Ecclesiastical.

Each class, however, is for all ecclesiastical purposes governed by the general law, except only so far as it may be varied or controlled by the provisions of the Act, or Acts, referred to.

Union of

It may be mentioned here, that under the 1st & 2nd Vict. c. 106, the 13th & 14th Vict. c. 98, and the 18th & 19th Vict. c. 127, two or more benefices may be united together for *ecclesiastical purposes*, where it

[1] See Tabular Statement in Appendix B., and Hints on Church Building in Appendix H.

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may prove to be to the advantage of the interests of religion; certain consents and formalities being necessary. And in like manner united benefices may be again subsequently disunited (8 & 9 Vict. c. 70, § 5).

Parishes have, in the present century, been subdivided, for ecclesiastical purposes, into (*a*) "*Distinct* and Separate" parishes; (*b*) "*District*" Parishes; (*c*) District Chapelries; (*d*) Consolidated Chapelries; (*e*) Particular or Patronage Districts; (*f*) Peel Districts; (*g*) Peel Parishes; (*h*) New Parishes for Ecclesiastical Purposes; (*i*) Separate Benefices; (*k*) Chapelries.

Ancient Parishes.

The Ancient Parish is defined as being "that circuit of ground which is committed to the charge of one parson or other minister, having cure of souls therein" (1 Blackst. Comm. 113). Their origin is obscure, but is doubtless of great antiquity, and purely ecclesiastical. Their boundaries generally accord with those of manors; for, though several manors are not unfrequently found in one parish, we seldom find more parishes than one in a manor. They were originally formed for ecclesiastical purposes only, although the division has been adopted for civil purposes. As regards civil purposes, this division has remained unchanged, except in a few instances under special local Acts of Parliament. There are about two hundred extra-parochial places, which were chiefly the sites of royal palaces, ancient castles, or religious houses, and thus were never united to any parish.

Boundaries.

It is usual to perambulate the parish annually; and if done only once in three years, the expenses may be paid out of the *poor*-rate (7 & 8 Vict. c. 101, § 63.) On beating the bounds, lands and houses may

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be entered, if on the necessary track (7 Ad. and Ell. 412).

As to ancient parishes, it is unnecessary further to enlarge. The rights and *status* of their incumbents sufficiently appear under their appropriate heads. We may mention that, under the 3d Geo. IV. c. 72, § 18, vicarages may be converted into rectories wherever the owner will restore the rectorial tithes, glebe, and other rectorial rights, etc.; and this applies (where vicarages have been divided under the Church Building Acts) to the separate divisions (and see § 14).

Earlier Church Building Statutes.

In the early part of the present century the enormous increase in the population of very many parishes, particularly in manufacturing towns and their suburbs, and the absolute necessity of making legislative provision for the subdivision of parishes and the erection of additional churches, was forced upon the attention of Parliament; and the first of the series of Acts known as "the Church Building Acts" was passed. This was the 43d Geo. III. c. 108. It was followed up by the statutes of the 58th and 59th Geo. III., and by numerous other Acts, the result being a most complicated accumulation of enactments, which at length defied analysis, consolidation, and even correct judicial interpretation. Much good to the cause of church extension has been, nevertheless, effected by them; and several thousand new churches, with parishes and districts of various classes attached, have been built under their provisions.[1]

[1] It is much to be regretted that the able and most faithful consolidation of the whole of the Church Building Acts and New Parishes Acts prepared by the eminent ecclesiastical lawyer Mr. A. J. Stephens, Q.C., LL.D., under the direction of Lord Westbury, was

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19 & 20 Vic. c. 55.

As to effect of Local Acts, see p. 48.

These statutes, however, are now of much less importance, since the powers of the Commissioners who administered them have been transferred to the Ecclesiastical Commissioners, who also administer the far more simple and effectual powers conferred in this respect upon them by the "New Parishes Acts" of 1843, 1844, and 1856 (better known as the "Peel Acts" and "Lord Blandford's Act"), although they still largely exercise the powers of some of the Church Building Acts where it may appear to them expedient.

Statutory Parishes.

Section (*a*). The Church Building Commissioners *could*, and now the Ecclesiastical Commissioners *can* (19 & 20 Vict. c. 55), under the 58th Geo. III. c. 46, § 16, the 1st and 2d Vict. c. 107, § 12, and the 14th and 15th Vict. c. 97, § 16, absolutely, and for all ecclesiastical purposes, cause a subdivision of ancient parishes, or new parishes and extra-parochial places, into two or more "distinct and separate parishes," and apportion the glebe-land, tithes, and also[1] (without reference to the limits of the severed district) the fees, oblations, and ecclesiastical dues arising within the district, and also the permanent charges (see 59 Geo. III. c. 134, § 9) payable out of the original parish, accordingly. The consents of the bishop and the patron are therefore both requisite, and upon these being obtained, a scheme is submitted to the king in council, and the order in council is thereupon made and gazetted, and the division is then legally

"Distinct and Separate" Parishes.

(*a a*) Those formed under the Church Building Acts.

How.

not passed in the session of 1865. It was miserably mangled after it left Mr. Stephens' hands; alterations in the laws were introduced, and in that condition it met with a well-deserved fate. What is wanted is pure and simple consolidation.

[1] See 59 Geo. III. c. 134, § 8.

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effected. The division, however, does not become complete until after the death, resignation, or other avoidance of the incumbent of the mother-parish, the new churches being until then, although "distinct benefices for ecclesiastical purposes," served by licensed curates appointed by the incumbent (59 Geo. III. c. 134, § 12); but upon that event taking place, the churches become separate benefices, and are thenceforth as distinct, for all ecclesiastical purposes, as if they had never been united to the old parish, and had themselves been ancient parishes: so much so, indeed, that the division becomes a rectory, vicarage, or donative, according to the nature of the original church (58 Geo. III. c. 44, § 19); such donatives, however, being expressly subjected to lapse (§ 20). Moreover, the incumbent has the exclusive cure of souls, and right of performing all the offices of the Church for his parishioners, who cannot, it is conceived, legally be married by banns *or license* out of the new parish (59 Geo. III. c. 134, § 17, and 3 Geo. IV. c. 72, § 17). The new parish is liable for the repair of its own church, and can levy its own church-rate, and elect its own churchwardens, and meet in vestry for all ecclesiastical purposes over which a vestry has control. It is not liable to the rate for the repair of the mother-church. (See the Compulsory Church Rate Abolition Act, 31 & 32 Vict. c. 109, § 6, Appendix B.) The division does not in any manner affect poor-rates or other parochial rates, or the parishioners, except as in the Acts is particularly provided.

When complete.

Church-rates.

If the Commissioners make a grant, however small, in aid of the building fund, they are enabled to fix a

Pew-rents in.

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scale of pew-rents to be taken for sittings in the church, other than those appropriated to the poor (58 Geo. III. c. 45, §§ 63, 64).

Patronage of.

The patronage rests with the patron of the old church (59 Geo. III. c. 134, § 13), but with the bishop if it is formed out of an extra-parochial place (14 & 15 Vict. c. 97). Only about forty new parishes of this description have been formed.

(*a*, *b*) formed by the Bishop.

In the cases of chapels of ease situate in parishes of large extent, *and at a considerable distance from the parish church, and having chapelries, townships, or districts belonging or supposed to belong thereto*, should any person endow them with land, money in the funds, or tithes, sufficient in the opinion of the bishop to ensure a competent stipend to the minister, the bishop, under his hand and seal, with the consent of the patron and incumbent of the parish, may declare such chapel so endowed separate and independent of the parish church, and that the chapelry, etc., shall thenceforth be "a separate and distinct parish for all spiritual purposes" (see 1 & 2 Will. IV. c. 38, § 23); and this, whether the church or chapel were erected before or after the passing of the Act (1 & 2 Vict. c. 107, § 7). See also section (*i*), *infra*. But by the 14th & 15th Vict. c. 97, § 14, the sole jurisdiction of the bishop was taken away as regards declaring patronage or assigning a district to any *new* church.

Churchwardens.

Churchwardens are to be chosen (being members of the Established Church), one by the minister, and the other by the vestry (1 & 2 Will. IV. c. 38, § 25).

"District Parishes."

Section (*b*). The next in order, in point of *status*, of the new ecclesiastical divisions, is the "District Parish."

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These number about 80 only. They are formed by scheme and Order in Council, under the 21st section of the 58th Geo. III. c. 45. They are qualified ecclesiastical parishes only, and of an inferior order to the preceding class. The tithes, glebe, and endowments of the original parishes, or extra-parochial places, are not affected by the division, and the consent of the bishop only therefore is necessary to their being made. How formed

The church of a district thus formed becomes, upon consecration, a distinct benefice and church for all ecclesiastical purposes (59 Geo. III. c. 134, § 12); but until the avoidance of the mother-church the district is simply served by a licensed stipendiary curate (§ 12), and the incumbent of the mother-parish is to continue to hold both churches as if they were one church, unless he voluntarily resign[1] (*ib.*). When complete

After an avoidance of the mother-church the district becomes complete as a "separate and distinct *District* Parish," for the purposes of worship and all ecclesiastical duties, and the offices of the Church, in relation to all fees for the same (§ 24), and the incumbent alone can perform within his church and district parish the offices of the Church, and receive the fees.[2]

These "*District* Parishes," when complete by the avoidance of the mother-church, become benefices presentative, and were formerly perpetual curacies. They

[1] The incumbent of the original parish may "resign" voluntarily, with the bishop's consent, the church of the district parish, and this operates as an avoidance (8 & 9 Vict. c. 70, § 15).

[2] The Commissioners might, however, direct that the surplice fees should continue to belong to the incumbent of the original parish (3 Geo. IV. c. 72, § 12).

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will now, however, be "vicarages" under the District Church Tithes Act Amendment Act (see Appendix A. and *supra*, p. 12), unless any of the fees (other than burial fees) have been reserved to the incumbent of the mother-church under the 3d Geo. IV. c. 12, § 12. These parishes were also formerly liable for twenty years from consecration of their churches to the repair of the mother-church, a liability which gave rise to considerable inconvenience. Now, however, under the Compulsory Church Rates Abolition Act, 1868 (Appendix B.), section 6, the parishioners are no longer liable to be assessed to any rate made in relation to the mother-church, and may, upon their church being consecrated, meet in vestry, and make a rate for themselves. (See *infra*, Chap. X.)

Pew-rents.

Pew-rents are also taken, if the Commissioners make a grant in aid of the building fund.

Patronage of.

The patronage generally belongs to the patron of the old church (58 Geo. III. c. 45, § 67), unless when the church is built by rates (§ 68). The reader is referred to the 1st & 2d Vict. c. 107, § 10, as to the assignment of districts to churches or chapels augmented by Queen Anne's Bounty, and their conversion into "District Parishes."

"District Chapelries."

Section (*c*). The division most extensively formed by the Commissioners, whether out of parishes or extra-parochial places, or (3 & 4 Vict. c. 60, § 1) out of other district chapelries, or out of "New Parishes" (14 & 15 Vict. c. 97, § 16), is that known as a "District Chapelry."

How formed

These are formed under the 16th section of the 59th Geo. III. c. 134, as enlarged by the 12th section of

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the 1st & 2d Vict. c. 107; the 1st, 2d, and 3d sections of the 2d & 3d Vict. c. 49; the 1st section of the 3d & 4th Vict. c. 60; and the 1st, 2d, and 3d sections of the 11th & 12th Vict. c. 37.

Districts assigned.

The Commissioners can, under these Acts, with the consent of the bishop alone, assign a district chapelry to any church or chapel previously erected.

Endowments of Original Parish.

The tithes and endowments of the original parish are not affected, although, under the 1st & 2d Will. IV. c. 45, § 21, as extended by the 1st & 2d Vict. c. 107, § 14, incumbents are enabled, with the consent of the bishop and patron, to charge their livings with an annual sum in favour of the church of the district chapelry, or to annex a portion of the glebe or tithes thereto (and see 28 & 29 Vic. c. 42; Appendix A.).

This has very frequently been done, and the bishops generally have required a permanent endowment before they would consecrate the church.

Constitution.

The new church is a benefice, whether augmented by Queen Anne's Bounty or not, and the incumbent has exclusive cure of souls, and the right to perform all or some of the offices of the Church, according as the bishop and Commissioners may have determined (8 & 9 Vict. c. 70, § 17; and 14 & 15 Vict. c 97, § 17). In most cases the right has been given to perform all the offices (excepting, perhaps, burials), and to take all the fees; and where this has been done the district will become a new "parish" under Lord Blandford's Act (see *infra*), and the incumbent will have the title of vicar (with the status, however, of perpetual curate) under the 31st & 32d Vict. c. 117 (see Appendix A.); but in some few cases, in consequence of the smallness of the

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income of the incumbent of the mother-parish, a reservation of the fees in his favour has been made, and the new incumbent consequently remains a perpetual curate, as he was previous to the recent Act.

The commissioners have power, on the application of the incumbent, to authorize all Church offices to be performed in the church, if such was not previously the case (19 & 20 Vict. c. 104, § 11).

Churchwardens are annually appointed by the incumbent and parishioners, who meet in vestry for the purpose.

Pew-rents in. The Commissioners generally make grants and fix scales of pew-rents for these districts.

Patronage. The patronage most frequently rests with the incumbent of the old church (although it may by arrangement be vested elsewhere under the 8th and 9th Vict. c. 70, § 23), but with the bishop, if formed out of an extra-parochial place (14 & 15 Vict. c. 97, § 26). A district chapelry may be converted either into a "*Distinct*" or a "District" Parish (3 Geo. IV. c. 72, § 16).

Church-rates in. Under the 6th section of the Compulsory Church Rates Abolition Act, 1868, this division and the next can, upon their new churches being consecrated, make their own church-rate, and the parishioners may meet in vestry for that purpose. (See Appendix B.)

Subdivision. By the 3d & 4th Vict. c. 60, § 1, the Commissioners may assign a new district chapelry or district chapelries out of a district chapelry or district chapelries already formed, the right of nomination belonging to the incumbent of the original parish, unless vested elsewhere by agreement.

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There were 684 district chapelries formed by the late Commissioners, and many have been formed since by the Ecclesiastical Commissioners.

Section (*d*). The next division comprises "Consolidated Chapelries" and "Consolidated Chapelry Districts." Consolidated Chapelries.

These are formed under the 59th Geo. III. c. 134, § 6; the 8th & 9th Vict. c. 70, § 9; and the 14th & 15th Vict. c. 97, §§ 19, 20.

They are the same as the last preceding class of division, except only: (1st) that the district is formed out of contiguous parts of different parishes instead of out of one parish; (2d) that the consent of the bishop and a majority of the patrons of the parishes affected is required; and (3d) that the offices of the Church become performable on consecration without a special order, the fees being reserved to the respective incumbents and clerks of the original parishes, and accounted for and paid over yearly to them, until their several avoidances, or until they shall severally voluntarily relinquish them. (See 8 & 9 Vict. c. 70, §§ 9, 10.[1]) Peculiarities of.

The number of these divisions is about 150.

As to the endowment (by the rectors and vicars) of Consolidated Chapelries, see 1 & 2 Vict. c. 107, § 14, and 28 Vict. c. 42.

[1] Several Consolidated Chapelries were formed prior to the 8th and 9th Vict. c. 70, and in these the fees, under the 59th Geo. III. c. 134, § 6, belong to the incumbent, not having been reserved in the last-mentioned Act; and these chapelries are all, therefore, *now* new parishes. (See p. 43.) In some cases, however, the Commissioners not having fixed a table of fees for these districts, *as required by the section referred to*, it may be questioned whether the incumbents, clerks, and sextons are entitled to *any* fees.

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Alteration of Boundaries of the foregoing several Divisions.

Under the 3d & 4th Vict. c. 60, § 6, and 8th & 9th Vict. c. 79, § 16, the boundaries of a "Distinct and separate Parish," a "District Parish," a "District Chapelry," and a "Consolidated Chapelry," may be altered at any time.

"Patronage Districts."

Section (*e*). The next division is that known as the "Particular or Patronage District."

How formed.

These are formed under the 1st & 2d Will. IV. c. 38, §§ 2 & 5, 1st & 2d Vict. c. 107, 2d & 3d Vict. c. 49, 3d & 4th Vict. c. 60, 7th & 8th Vict. c. 56, 11th & 12th Vict. c. 37, and the 14th & 15th Vict. c. 97, §§ 7 & 11, by the Commissioners. Until the 14th & 15th Vict. c. 97, § 14, they might be formed by the bishop alone. The consent of the bishop is necessary in every case. The process is to assign districts to churches already built and endowed by private individuals. The consent of the patron and incumbent are not required, as they both have notice previously of the intention to build and endow the church, to state objections, and with the option to build themselves. Moreover, the tithes and endowments of the parent living are not affected. The endowment usually required is 1,000*l.*, or 40*l.* a year at least, or a house of residence, with pew-rents, if any.

The Commissioners are to give preference in certain cases to persons proposing to enlarge existing churches (1 & 2 Will. IV. c. 38, § 8).

Are Perpetual Curacies.

The district is a benefice, and the incumbent a perpetual curate (1 & 2 Will. IV. c. 30, § 12), with exclusive cure of souls (2 & 3 Vict. c. 49, § 10). The bishop and the Commissioners arrange as to the offices of the Church to be performed by the incumbent, but

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the fees are reserved to the mother-incumbent, until either he relinquishes them, or the bishop and Commissioners otherwise order.

Patronage

The patronage is vested in the parties who build and endow the church, or trustees nominated by them (who are to be not more than five in number), and they or the bishop arrange as to the pew-rents and their disposal. (See 1 & 2 Will. IV. c. 38, §§ 4, 9, 22.)

Repair Fund.

A repair fund is generally required of 150*l.* consols, but the parishioners may make a church-rate, and meet in vestry for that purpose under the 31st & 32d Vict. c. 117, § 6. (See Appendix B.) The repair fund appears to be different where the bishop alone acted (compare secs. 2 & 5). These districts become new parishes under Lord Blandford's Act (see pp. 43 *sqq.*), and their incumbents vicars under the District Church Tithes Act Amendment Act. (See Appendix A.)

Boundaries

The boundaries of particular districts may be altered by the Commissioners and bishops under the 11th & 12th Vict. c. 37, § 2.

About 200 only of these districts have been formed.[1] See cases in Appendix F.

As to Districts and Parishes formed under the New Parishes Acts.

Section *(f)*. The next, but by no means the least important of the various ecclesiastical divisions, is the "Peel District," formed under the 6th & 7th Vict. c. 37. This Act[2] introduced an entirely new order of things with regard to parochial subdivisions, which

"Peel Districts."

[1] It is now found preferable in many instances for private individuals to proceed in cases like this, under the New Parishes Acts. (See *infra.*) But an endowment of 100*l.* a-year at least is requisite, and security that it shall be increased to 150*l.* per annum upon the church being consecrated.

[2] See Appendix A.

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has to a great extent superseded or absorbed the pre-existing modes of procedure.

This Act is administered by the Ecclesiastical Commissioners, who, besides having ample powers under their own peculiar Acts, *have had transferred to them all the powers and functions of the Church Building Commissioners*, which they now exercise with great public advantage in combination with their own powers.

How formed.

Under this Act (as subsequently amended by the 19th & 20th Vict. c. 104, § 1),[1] districts[2] are formed by a scheme and Order in Council, with or without a church, and a minister is appointed, licensed by the bishop; the incumbent and patron of the parish being previously consulted (§ 9). The incumbent's license declares his powers (but cannot authorize marriages or burials), and the services and offices which he is to perform, and the extent to which he has an independent pastoral charge and cure of souls (§ 11), but he cannot take any fee for baptisms or registering them.

Perpetual Curates.

He is a perpetual curate and body corporate, and can accept grants of land and endowments, etc. (§ 12), and is only removable as other perpetual curates.

Temporary reservation of rights.

Until, however, the new church is consecrated, the right of the incumbent of the original parish as to marriages and burials, and as to fees (other than those fees which the district incumbent may have been authorized to receive under § 13), is not affected; nor is the right of the inhabitants to attend divine service in any other church or chapel (§ 14).

[1] See Appendix A.

[2] Several hundred Districts, or rather new Parishes, have been formed already under this and the other "New Parishes" Acts.

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"Peel Parishes."

Section *(g)*. Upon the new church being *consecrated* in the Peel district, it becomes (§ 15) a "new parish for ecclesiastical purposes," and the church is the church of such new parish; the bishop's license of any temporary building becomes thereupon void; and all the offices of the Church may then be performed therein, and such fees as shall be fixed by the Chancellor of the diocese may be taken by the incumbent: no fees, however, can be required for baptisms and registering them[1] (§ 15). Moreover, Easter offerings and dues may be taken, and (§ 16) the incumbent has *exclusive* cure of souls in and over the new parish. Under the District Church Tithes Act Amendment Act (Appendix A.) he will now be entitled to the designation of vicar. Churchwardens may, as in the case of all the previous divisions, be chosen, provided they (§ 17) *be members of the Church of England;* and the parishioners of course meet in vestry for ecclesiastical purposes, as in the case of ordinary parishes. All laws, statutes, and customs in respect of the ordinances of the Church, registration thereof, and the recovery of the fees, oblations, and offerings in respect thereof, are to be in force in the new parish (§ 15).

Patronage of.

The patronage of the Peel districts and parishes, until otherwise assigned, rests with the Crown and the bishop alternately. It may, however, be granted, for one or more turns (§ 20), to persons contributing to the endowment, and about 40*l.* a-year is the amount required; but the patronage cannot be granted in per-

[1] This, it may be observed, is not a "*reservation*" out of the fees, and does not prevent sec. 2 of the District Church Tithes Act Amendment Act from operating.

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petuity for any less consideration than building the church, and endowing it with at least 45*l.* a-year clear, or the permanently endowing the church with 150*l.* a-year clear, or an equivalent gift or benefaction (19 & 20 Vict. c. 104 § 17). As to the consents and formalities necessary, see that Act, §§ 18 to 20. (See Appendix F.)

The Act is silent as to pew-rents, although they have been taken in these churches. The power to fix a scale of, and to recover, pew-rents was acquired through the medium of a grant from the Commissioners (and see § 24).

Church-rates in.

The status of Peel parishes in this respect (as of all other legal districts or parishes having consecrated churches) is now regulated by the Compulsory Church Rates Abolition Act, section 6. (See Appendix B.)

The Peel Act (6 & 7 Vict. c. 37) contains the following proviso, which is of importance with reference to the general effect of the 19th and 20th Vict. c. 104, § 15 (which see *infra*, and in Appendix A.), upon all Peel districts and Peel parishes:—

"Provided always, and be it enacted, that *until* "*Parliament shall otherwise determine*, nothing "herein contained shall be construed to affect "or alter any rights, privileges, or liabilities, "whatsoever, ecclesiastical or civil, of any par-"ish, chapelry, or district, except as herein is "*expressly* provided" (§ 18).

The effect of this proviso was, it is conceived, simply to prevent the mere conversion of the district into a "*parish*" from carrying with it, as legally incident to a parish, any rights, privileges, or liabilities of

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a parochial character, except those conferred by the Act of 6 & 7 Vict. c. 37, in *express* terms, as in the 15th, 16th, and 17th sections of the Act.

"New Parishes."

Section (*h*). We now come to the most important of all the efforts of the Legislature in favour of the *complete* subdivision of parishes for ecclesiastical purposes; and one which is pregnant with vital good to the Church, when its provisions are fairly and fully carried out. We refer to the 19th and 20th Vict. c. 104 (Lord Blandford's Act, see Appendix A.), which is now actively administered by the Commissioners.

How formed.

By this Act, the Ecclesiastical Commissioners can, on assigning a district to a church, *at once* make it a "Peel parish," without previously constituting it into a district only (§ 2). No transition state is necessary to its full development, nor is any endowment absolutely necessary.

Pew-rents in.

Express power is given to the Commissioners to fix a new scale of pew-rents in all *future* districts (§ 6).

By § 11 the Commissioners can, with the consent of the bishop, authorize the performance of all the offices of the Church in the church of *any district*. The incumbent, however (§ 12), will (if any of the fees have been reserved to the incumbent of the mother-parish, or would, but for the Commissioners' order, *of right* belong to him) have to keep an account of the fees reserved, and to pay them over every three months to the mother-incumbent, until he shall either relinquish them or avoid the living. This reservation, as before stated, generally existed in the case of "consolidated chapelries," and "patronage districts," and sometimes, though rarely, in the case of "district chapelries."

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Supposed Districts.

The incumbents of churches or chapels, *with or without districts, or with districts supposed or reputed to belong to them, but which have not been assigned under the foregoing Acts, will probably find it necessary or expedient to resort* to the Ecclesiastical Commissioners, and get districts formally assigned under sections 1 & 2 of this Act. There are many ancient chapelries, townships, etc., to which this assignment may be most valuable, since it might be contended that the 14th section of this Act only applies to districts "belonging" to churches by virtue of the authority therein referred to, *i.e.*, an Order in Council. The incumbents should also get the fees assigned to them under the 11th section of this Act, and then, upon the next avoidance by the incumbent of the original parish, or his relinquishment[1] of the fees, these districts (in common with those of all other incumbents having churches with districts, and who, under the authority of the Commissioners, perform all the offices and receive and keep the fees without reservation) will (under sections 14 & 15) become, *ipso facto*,[3] separate

[1] As a matter of practice it will probably be found expedient that such relinquishment should be made by deed of surrender, copies of which should be deposited in the Diocesan Registry and in the parish chests of the churches of the incumbents who are parties to the deed.

[2] The right to perform *Burials* is not necessary to the district becoming a parish.

[3] There is some ambiguity here occasioned by section 12 in terms requiring the office of the clerk to have *also* become vacant or a compensation in lieu of fees made to him before the reservation of the fees ceases; but this, doubtless, simply means, that the reservation as to the clerk's fees only shall continue until he vacate or be compensated. If otherwise, the operation of section 15 will be delayed.

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and distinct parishes for ecclesiastical purposes, with all the rights and privileges conferred by the Peel Acts, and also with those conferred in addition by the present Act of Lord Blandford, and which latter are of the utmost value, and will also (as we have seen) become titular vicarages under the District Church Tithes Act Amendment Act.

Incomplete Districts.

Incumbents who *have had* districts assigned by Order in Council, but who have not the right, under an authority from the Commissioners, to perform all the offices of the Church, can apply to the Commissioners for an order (under § 11) authorizing them to perform all the offices, and then, upon the next avoidance by the incumbent of the mother-church, or upon the relinquishment of the fees by him, these districts will (under §§ 14 & 15) become complete ecclesiastical parishes, as described in the next paragraph.

Conversion of Districts into Parishes.

(a) first into "Peel Parishes."

The 14th section of Lord Blandford's Act converts into "Peel parishes"—*subject*, however, to any "*special*" rights, privileges, or liabilities, ecclesiastical or civil (see § 29), which may exist either by virtue of local Acts or otherwise (§ 15)—all "districts[1] belonging "to a consecrated church or chapel, in which," either at the passing of the Act (29th July, 1856) or thereafter, "banns of matrimony, the solemnization of mar-"riages, churchings, and baptisms, according to the "laws and canons, are authorized by Order in Council, "or by an order of the Commissioners under section "11, to be published and performed," if the incumbent is "entitled for his own benefit, without any reserva-

[1] Whether formed by the Church Building Commissioners or the Ecclesiastical Commissioners. (See Appendix B.)

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"tion thereout, to the entire fees arising from the "performance of such offices." As soon, therefore, as he is entitled to perform those three offices, and to retain the fees for them, his district becomes a new parish. (See notes on this 14th section in Appendix A.)

Districts, however, which "*at the time of the passing* "*of the Act* were separate and distinct parishes for eccle- "siastical purposes,"[1] are not affected by this section.

Probably the 14th section will be held to apply to such of the two first classes of division, sections (*a*) and (*b*), as were *not* at the passing of the Act complete by the avoidance of the mother-incumbent; and it is conceived that (with the exception of those two particular classes, *where they were actually complete at the passing of the Act*) this section applies to *all* the classes of districts already described in this chapter, excepting the cases next described.

Authority requisite for the Offices.

It has been decided that certain "patronage" districts, section (*e*), are not included, on the ground that their incumbents only perform the offices and take the fees by virtue of the bishop's license, under the 66th Will. IV. c. 85, § 26, *which is revocable*, and therefore have not "the authority" to perform the offices and to keep the fees to which the 14th section of this Act refers. (See Regina *v.* Perry, 3 Law Times, N. S. Q. B. p. 885.) For the same reason the incumbents will not, it appears, become vicars under the District Church Tithes Act Amendment Act. (See Appendix A.)

If this Act had stopped at the 14th section, the *status* and rights of districts, upon being converted into

[1] *i.e.*, "Distinct and separate" parishes or "district" parishes, sections (*a*) and (*d*), *ante*, and "Peel parishes."

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parishes, would have been clear, although not satisfactory. They would have had the rights expressly provided in the 15th, 16th, and 17th sections of Peel's Act, with the additional right to get a scale of pew-rents fixed, as before described; also, the right in the incumbent to appoint the clerk and sexton (section 9 of Lord Blandford's Act). The freehold of the site of the church and burial-ground, house of residence, and all endowments, would have been legally vested in the incumbent and his successors (§ 10). Further, he might (under section 26 of Lord Blandford's Act) have obtained an apportionment of the glebe, tithes, and endowments (including charities divisible in their object) of the old parish. (See also § 31, and the case of the Attorney-General *v.* Love, 29 Law Times, O.S. p. 36.)

But this state of things would, perhaps, have left open the question as to the *exclusive* right of the incumbents of such parishes to marry and bury their own parishioners, and to perform for them all the other offices of the Church.

It might have been contended that although the Peel Act gave the incumbent "exclusive cure of souls," it did not prevent the mother-incumbent from publishing, in the old parish church, the banns of, and marrying, and also burying, the parishioners of the new parish, and taking the fees; and that it did not deprive the parishioners of their previous right to be married, etc., in the old church, if they so preferred. In short, that it left an *option* to the incumbents and their respective parishioners.

Indeed, it was even contended that the incumbent of the original parish was not by the Peel Act deprived

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of his previous right of performing the offices of the Church *within the limits* of the Peel parish, and that the Act gave the incumbent of the new parish merely the *right* to perform those offices (§ 15 of 6 & 7 Vict. c. 37), and reserved to the incumbent of the original parish his previous rights, subject to the permissive (not exclusive) right of the new incumbent (§ 18).

On the other hand, § 16 of the same Act not only converts the district into a "parish," and gives the incumbent of the new parish the exclusive cure of souls, but it also declares that "such parish and its church "shall be a *perpetual curacy*, and a *benefice with cure of "souls*, to all intents and purposes;" and this is an "express" provision within the meaning of § 18, at all events as between the respective incumbents, and also, perhaps, as regards the parishioners of the new parish, to the extent of their *ecclesiastical* rights, privileges, and liabilities. (See further, note to § 15, next quoted.)

In respect, moreover, of marriages, the present Act (if it had rested at the 14th section) would have lowered the *status* of the "district chapelry," since, under the 17th section of the 3d Geo. IV. c. 72, the publication of banns, and marriages whether by banns or by license (which is merely a dispensation with banns), *out* of these districts, between parties residing *in* them, are declared to be invalid.[1]

(*b*) Enlargement of Rights of "Peel Parishes" into complete Ecclesiastical Parishes.

Lord Blandford's Act, however, contains the following section (§ 15), which is the pith and essence of the whole, and the point towards which all its other provisions converge :—

[1] But as to marriage by *license* in such cases, see Tuckness *v.* Alexander, 32 Law Journal, N.S. Ch. 794.

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"The incumbent of every new parish created, or "hereafter to be created, pursuant to the provi- "sions of the said *firstly and secondly recited* "*Acts*[1] or *of this Act*,[2] shall, saving the rights of "the bishop of the diocese, have sole and exclu- "sive cure of souls, and the exclusive right of "performing all ecclesiastical offices *within the* "*limits of the same*,[3] for the resident inhabitants "therein, who shall for all ecclesiastical purposes "be parishioners thereof, *and of no other parish;* "and such new parish shall, for the like purposes, "have and possess all the same rights and privi- "leges, and be affected with such and the same "liabilities, as are incident or belong to a distinct "and separate parish, *and to no other liabilities:* "Provided always, that nothing herein contained "shall be taken to affect the legal liabilities of "any parish regulated by a local Act of Parlia- "ment, or the security for any loan of money "legally borrowed under any Act of Parliament "or otherwise."

This section, as to Peel parishes in particular, seems to overrule the 18th section of the Peel Act,[4] and to

[1] That is, the Peel Acts of 1843 and 1844. The Act of 1844 is, comparatively, of little importance.

[2] That is, under sections 2, 14, 25.

[3] It has been contended that these words, whilst limiting the exclusive right of the incumbent to the performance for his parishioners of the offices, etc., *in his own parish*, do not prevent the incumbent of the original parish from performing the offices for parishioners of the new parish *out of its limits*, and only converted the right of the former from a permissive to an exclusive right within his own limits: *sed quære.*

[4] See Appendix A.

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annihilate all rights, privileges, or liabilities, whether ecclesiastical or civil, inconsistent with the existence of the new parish as an entirely separate and distinct parish for ecclesiastical purposes (but see § 29).

Effect of Lord Blandford's Act. Local Acts, etc.

As to all original "Peel" parishes formed under the 6th & 7th Vict. c. 37, and as to all other ecclesiastical parishes and dictricts already described, and converted into "Peel" parishes by the 14th section of the present Act, as already explained, and as to all other new parishes created under this Act of Lord Blandford, this 15th section, it is conceived, renders them as distinct and separate, for all ecclesiastical purposes whatever, as if they had never formed part of the original parishes out of which they were carved. For all ecclesiastical purposes, they are as if they had been ancient parishes; and inasmuch as in their origin parishes were simply ecclesiastical divisions,—their civil rights and liabilities having been superadded in later times,—this result seems to be clear and complete.

In respect of poor-rates highway-rates, and various other civil or common-law matters, the new parishes remain as if no ecclesiastical separation had taken place.[1]

The incumbents of the "new parishes" and their parishioners are, therefore, it seems, entitled to act in all ecclesiastical matters as if their parishes were entirely separated, *locally* as well as ecclesiastically, from the original parish, and had never formed part of it, and

[1] It has, however, been held that a Peel parish (and therefore also a new parish) is a "place" under the local Government Act, 21 & 22 Vict. c. 98 §§ 2 & 16), and may adopt that Act, and be constituted a Board of Health (35 L. J. N. S. Q. B. p. 90; and 7 B. & S. p. 110).

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to regard the incumbent, vestry, and parishioners of the original parish, in all ecclesiastical matters, accordingly.

Local Acts, etc.

The proviso in section 15 appears to amount in effect to this—that the exemption from liability previously conferred in the section upon the parishioners of the new parish (viz., an exemption from "any liabilities other than those incident to a distinct and separate parish") shall not affect (1st) the liabilities of any parish regulated by a local Act, or (2d) the security for any loan legally borrowed under any Act or otherwise. In all respects other than as regards the peculiar liabilities thus excepted, this section (as far as this proviso is concerned) clearly seems to convert the districts possessing its required conditions into "new parishes." They are "new parishes" *subject* and without prejudice to those liabilities, but still "new *parishes*." By section 1 of Lord Blandford's Act, express power is given to constitute Districts, notwithstanding local Acts.

As to the first exception in the proviso, this is only a saving of "*legal liabilities*;" *i.e.*, it is presumed, legal liabilities thrown upon the ancient or original parish by the provisions of a local Act, *which regulates the parish*, not by a mere special Church Building Act; and as far as these liabilities are concerned, the parishioners of the original parish resident within the limits of the new parish remain liable as before.

Under the 14th & 15th Vict. c. 97, § 21, where the provisions of local Acts then (1851) in force prevent the formation of parishes or districts out of an original parish, under the Church Building Acts, there, if a

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representation be made to the Commissioners by the patron, incumbent, and vestry, or persons exercising the powers of vestry in ecclesiastical matters, the Commissioners may, with the consent of the bishop, put in force their powers, notwithstanding the local Acts. (See also the 3d Geo. IV. c. 72, §§ 7 & 35, and 1 & 2 Will. IV. c. 38, § 27.) In Fitzgerald *v.* Champneys, (5 L.T.N.S. 233), Wood, V.C., decided that an Order in Council assigning a district chapelry, *after* the passing of the 14th & 15th Vict. c. 97, *without* the representation to the Commissioners required by that Act, was *ultra vires* so far as it interfered with local Acts, and therefore void; but that districts and new parishes *may* be formed under the Peel Acts, notwithstanding local Acts, according to section 1 of Lord Blandford's Act. (The case of Jackson *v.* Courtenay, 27 Law Journal, N. S. Q. B. p. 37, was cited in the above case.)

The second exception in the proviso preserves intact the security for any loan of money borrowed under any Act of Parliament or otherwise. What the words "or otherwise" may mean, it is difficult to explain; but as far as regards any liability resting upon the parishioners of the original parish, under the provisions of any special local Act or any general Act (as the Church Building Acts), with respect to any loan raised for rebuilding, enlarging, &c., the parish church, or other similar purposes, the proviso appears to leave the parishioners liable as before, whatever that liability may have been.[1]

[1] These loans have generally been raised upon the security of the church-rate, and in this case the liability will remain as before: indeed, in such a case a rate cannot be refused even by a majority.

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To sum up : this proviso only appears to save intact (1st) all liabilities of the general body of parishioners of the original parish, imposed by a local *Parochial* Regulation Act ; and (2d) their liabilities under any local Act with reference to any loan of money raised for church purposes under such last-mentioned Act.

Special Rights and Liabilities.

By section 29 of the Act it is provided, "that "nothing in the Act contained shall be construed to "affect or alter any existing or special rights, privi- "leges, or liabilities whatsoever, ecclesiastical or civil, "of any parish, district, or place, except as is herein "otherwise provided."

This section appears to save[1] out of the operation of the Act any "special" rights, or privileges, or liabilities "existing" in any ancient parish, or distinct and separate parish, or district parish, chapelry, district chapelry, consolidated chapelry, or extra-parochial township, village or hamlet (see § 23).[2] The words "existing or special" would doubtless be construed, "existing *and* special." This construction of "or" into "and" is of frequent occurrence in the courts of law. This particular section, indeed, adds force to the Act in this way. The 18th section of the Act of 1843 *reserved*, "until Parliament should otherwise

These rates are, by sec. 3 of the Compulsory Church Rate Abolition Act, 1868, expressly excepted from the operation of that Act (see *infra*, Chap. X. sec. 1).

[1] An instance of a "special right" of a district is that of the peculiar qualification of churchwarden of a Peel parish (*supra*), and the special right, &c., of a "district chapelry" as to marriages (see *infra*, "Marriages"), or the right, as in Clerkenwell, in the general body of parishioners of the original parish to elect the incumbent of the original parish, the peculiar customs in London parishes, &c.

[2] There is no saving here in the case of "particular districts."

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determine," *all* rights, privileges, and liabilities *whatever, other than* those "expressly" conferred by that Act. In this Act (in which, it is conceived, Parliament "*has* otherwise determined") all rights, privileges and liabilities whatever, incident to a separate and complete parish, are explicitly *given*, only excepting those of a *special* nature. The exception gives greater scope to the section. All is here given beyond that which is excepted.

Summary of Lord Blandford's Act.

In one word, the Act under consideration converts into a separate and distinct "parish," for all ecclesiastical purposes whatsoever, every district which legally belongs to a consecrated church or chapel, the incumbent of which performs, or shall hereafter be or become entitled to perform, by an irrevocable authority, all the offices of the Church (except burials), and to retain the fees payable in respect of such offices without reservation; and this conversion takes place, notwithstanding such district form part of a parish regulated by a local Act, or in which, under a special Act or otherwise, a loan has been raised for any Church purpose. In the two last cases the district becomes a parish, *subject* and without prejudice to local Act or loan. And in all cases where any *special* rights, liabilities, or privileges exist, the district becomes a parish subject and without prejudice to *them*.

Compensation to the Incumbent of the Mother-Parish.

By § 19 of the Act of 1843, and § 13 of Lord Blandford's Act, compensation is to be awarded to the incumbent of the mother-church by the Commissioners for the loss of fees and emoluments by any proceedings under the New Parishes Acts of 1843, 1844, or 1856.

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Similar provision is made in the Church Building Acts (14 & 15 Vict. c. 97, §§ 3 & 4).

We have dwelt at some length upon this statute, because of its most important, extensive, and beneficial character. It affects, or will affect, all, or almost all, districts formed or to be formed. It cannot fail, in process of time, without undue prejudice to existing interests, to distribute more equally amongst the clergy the burdens and privileges of their office; it will tend gradually to efface the unhappy line of demarcation between the district clergy and the incumbents of the ancient parishes; it will, in conjunction with the District Church Tithes Act, and other measures in force or in contemplation, assist in placing all the working clergy of the country in their proper relative positions in point of means, *status*, influence, and responsibility, both as between themselves and as regards their respective parishioners; and, finally, it will do more to strengthen the power of the Church, and bring her influence home to each household of her members, than any of the recent measures which have emanated from the Legislature.[1]

Disunited Benefices.

Section (*i*). *Separate or disunited Benefices.*—By the 26th section of the 1st & 2d Vict. c. 106, the archbishop, *ex mero motu* as to his own diocese, or on the representation of any bishop of any other diocese, may draw up a scheme for constituting into a separate benefice any tithing, hamlet, chapelry, district, or

[1] The able and explicit little work of Mr. J. C. Traill on the "New Parishes Acts," published by Maxwell, London, should be consulted by all who are interested in the important subject of the formation of "new parishes."

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place, and separating it from the mother-church, either by itself, or by annexing it to any other parish, tithing, etc., or for constituting any extra-parochial place into a separate parish for ecclesiastical purposes, or annexing it to any contiguous parish. The scheme is to describe the mode of appropriation of the glebe-lands, tithes, and ecclesiastical dues, rates, and payments, and as to patronage and rights to pews; and, if the patron consent, the Queen may, by Order in Council, carry the scheme into effect, and on being registered in the Diocesan Registry it becomes binding on all persons. If the incumbent of the mother-church does not consent, the order does not operate until his avoidance. This separation may be effected during a vacancy of the mother-church (2 & 3 Vict. c. 49, § 6). The separated parish becomes a perpetual curacy[1] and benefice (§ 8) with exclusive cure of souls, but, if the incumbent of the mother-parish has not consented, not until his avoidance.

Divided and Consolidated Benefices.

It is well here to refer to the 3d & 4th Vict. c. 113, § 72, under which the Commissioners may, with consent of the patron, divide or consolidate benefices in which both the profits and spiritual charge are divided between two or more incumbents, each having a portion of the benefice.

Sinecure preferments may also be annexed to benefices with cure of souls, with the consent of the patrons (§ 71), and the income of two benefices belonging to the same patron may be apportioned be-

[1] Or "vicarage" under the District Church Tithes Act Amendment Act where declared "a parish," and when the incumbent is entitled to the fees as mentioned in sec. 2 of the Act. (See Appendix A.)

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tween the two incumbents (§ 74; and see 17 & 18 Vict. cap. 84, § 8).

United Benefices. Pluralities Act as to Union of Benefices.

Section (*k*). *Union of Benefices.*—By the 16th section of the 1st & 2d Vict. c. 106, the archbishop, *ex mero motu* as to his own diocese, or on the representation of any bishop of any other diocese, may, after publication on the church doors, and no cause shown, and with the consent of the patrons, to be followed by Order in Council, cause to be united two contiguous benefices, or a benefice and a sinecure rectory or vicarage, but for ecclesiastical purposes only. The Order in Council regulates the patronage, but does not affect secular matters.

The power applies irrespective of the aggregate population or the aggregate yearly value. (See 13th & 14th Vict. c. 98, § 8, and 18th & 19th Vict. c. 127, §§ 1—10.)

The glebe-lands, tithes, &c., or a portion, may be excepted, if more than sufficient for the united benefice, and may be exchanged for other lands in order to augment an adjoining poor living.

Disunital of Benefices.

Section (*l*). *Disunion of Benefices.*—Where the archbishop or bishop on inquiry deems it expedient that two benefices which have been or may be united should be disunited, he may do so, and also sever the glebe, &c., in the same manner as described in the preceding section (*k*), except that the consent of the patrons is not necessary (1 & 2 Vict. c. 106, § 21), unless the benefices have been united for more than sixty years.

Ancient Chapelries.

Section (*m*). Ancient chapelries seem to be chapels built—not in aid of and subsequent to the original

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parish church, but—coeval with and independent of the church, and for some particular district which, although within the limits of the original parish, was not included within its pale (3 Steph. Blackst. 115; 7 Ad. and Ell. 880).

It is difficult to give any general account of their rights and *status*, which vary much in extent and character.

Parochial Chapels.

Besides the foregoing, there appear to be a few churches or "parochial chapels" which have been built and consecrated on land granted for the purpose under the 43d Geo. III. c. 108, the 51st Geo. III. c. 115, and the 52d Geo. III. c. 161, § 27.

Districts may now be assigned by the Ecclesiastical Commissioners to *such* churches or chapels under the 19th & 20th Vict. c. 104, § 1.[1]

As to churchwardens and other officers of parishes and districts, pew-rents, &c., see Chapters V. and VI.

[1] And by the 2d & 3d Vict. c. 49, § 3, the Commissioners may assign a "district chapelry" to *any* church or chapel.

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CHAPTER V.

Of Churches and Chapels.[1]

Division 1.—*Parish and other Churches and Chapels generally.*

The essentials of a parish church (unless made so by statute) are, that it should have been consecrated; should have existed from time immemorial; that the inhabitants should never have contributed to the repairs of any other mother-church: it should also have a burial-ground, a communion-table; christenings should have been performed therein, and Easter-offerings have been paid to its minister (Cripps, 488, &c., and cases there). Parish Churches.

A church is not recognised in law, as such, until consecrated (1 Burn, Eccl. L. 323); and, when consecrated, it can only be unconsecrated by Act of Parliament (1 Mad. 108); but, by a faculty, or under the Church Building Acts, it may be taken down and rebuilt on the old site or elsewhere; but the new building should be reconsecrated in either case (Warner *v.* Gate, Sir H. J. Fust, 1839; Turner *v.* R. of Hanwell, 1842). Consecration. Reconsecration.

Where, however, the communion-table has been re-

[1] In connection with the subject of this chapter, the reader is referred to Archdeacon Sinclair's "Hints on Church Building," in Appendix H.

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moved, and the walls of the church in part demolished, it is enacted that marriages, rites, and ceremonies shall be valid, and the church shall not require reconsecration or reconciliation (30 & 31 Vict. c. 133, § 12).

Fees. By the 30 & 31 Vict. c. 135, the Archbishop of Canterbury, with the consent of the Treasury, is to settle a table of fees for consecrations, ordinations, and visitations, which is to be submitted to the Privy Council. The fees, etc., are about 15*s.* exclusive of travelling expenses of the bishop's officers to and from the parish.

Endowment not necessary. An endowment was necessary before consecration (Gibs. 189), and also under the Church Building Acts; but not now (Lord Blandford's Act, § 3), where an adequate maintenance for the minister exists, or may be reasonably expected from other sources.

Substitution for. A new church may be substituted for the old, and the rights and endowments of the latter transferred to the former (3 Geo. IV. c. 72, § 30, and 8 & 9 Vict. c. 70, §§ 1 & 2), and *vice versâ* (1 & 2 Vict. c. 107, §§ 16, 17, & 18, and 2 & 3 Vict. c. 49, § 9).[1]

Freehold in. The freehold is in the rector, whether spiritual or lay; but the *possession* is in the incumbent, whether rector, vicar, or perpetual curate, and that, too, both as against the lay rector and the churchwardens; and this applies to the whole church, *including* the chancel, and to the churchyard; but he must allow the churchwardens and parishioners access at all proper times (Griffin *v.* Deighton, 33 L. J. N. S. Q. B. 181.; Jones *v.* Ellis, 2 Young & Jervis' Rep. 265). All actions, therefore, touching the right of possession must be

[1] See Division 3 of this Chapter, as to pews in such cases.

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brought by, and in the name of, the incumbent (Steer, p. 48).

Under the Church Building Acts (8 & 9 Vict. c. 70, § 13), the freehold of the site of the church and burial-ground, if conveyed to the Commissioners, and, in all new parishes (19 & 20 Vict. c. 70, § 10), the freehold of the site of the church and of the glebe, endowments, &c., vest in the incumbent; the sites of churches built by private individuals, under the 5th Geo. IV. c. 103, or the 1st & 2d Will. IV. c. 38, vest, until they become parishes under Lord Blandford's Act, in the persons named in the deed of consecration.

Rights of Parishioners.

The parishioners are entitled to the *use* of the chancel for the celebration of the Holy Communion, and solemnization of marriage (Cripps, 444).

Key of Church.

The key of the Church belongs exclusively to the incumbent (Redhead *v.* Wait, 6 L.T.N.S. 580).

Chancel.

The burden of the repairs of the chancel, in the absence of custom to the contrary, rests with the rector, or, in vicarages, the impropriator (Wats. C. L. 91; Steer, 48), except in London, where the parishioners repair it. Immemorial use and occupation, coupled with reparation, may give a title by prescription to the perpetual and exclusive use of a chancel; and this although the freehold may not be in the person having the right, and although the estate or house to which the chancel is appendant may not be situate in the parish (Churton *v.* Frewen, 2 Law Reports, Chancery, p. 684).

Monuments and Vaults.

In strictness, a monument may not be erected in the church or the chancel, or even, it is said, in the churchyard, without the license of the ordinary (3

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Steph. Bl. p. 70); and if that is granted, the incumbent, it seems, has no veto, unless perhaps as to the chancel, if he be rector. Usually, however, the consent of the incumbent, as representing the ordinary, is alone obtained. The ordinary usually reposes confidence in the minister to do what is proper (1 Hagg. C. R. 208).

The archbishop may revoke the license, and order the monument to be removed, if he sees good reason (Stran. 575, 1080).

A vault, and, in strictness, a monument, can only be granted by faculty (8 B. & C. 288, Seager *v.* Bowle, 1 Add. 554); and unless so granted, a vault may be opened by the incumbent for the burial of other persons therein.

The monuments belong to those who erected them (2 Carrington & Paine's Reports, 14), and they have a remedy by action of trespass for injuries to them (Spooner *v.* Brewster, 10 Moore, 494). By custom, fees for erecting gravestones and monuments may be demanded (Burn i. 273).

Defacing Monuments.

Defacing monuments is also punishable (Co. Lit. 18 b, Steer, 46), and the churchwardens may sue the wrongdoers (Bishop *v.* Turner, Godb. 279).

Objectionable Monuments.

An incumbent objecting to a monument, or the inscription thereon, should insist on the consent of the ordinary, who could hear his objections and decide accordingly (Cripps, 482).

Repair of.

The owners may repair, but they should, as a matter of form, obtain the leave of the churchwardens, although the latter cannot refuse. (See Bardin *v.* Callcott, 1 Hagg. Cons. 14.)

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Aisle.

The aisle sometimes belongs to private individuals, by grant or faculty (3 Inst. 202), and may, unlike pews, be prescribed for (and so may seats in it), as annexed to houses *out of* the parish (Gibs. 198); but the owners so claiming it must have repaired it from time immemorial (2 Add. 427, 1 Hagg. 321).

Alteration.

The church may be altered and enlarged, if necessary, and a license or faculty for the purpose be obtained. The consent of the vestry is unnecessary, and its opposition would not prevent the grant of the license.[1] The ordinary is the sole judge of the necessity in case of dispute (Cripps, 447). The incumbent or parishioners are not justified in making any such alteration without the authority of the ordinary. (See 7 Jur. N. S. 884. Arch. and 36 L. J. 1, Ecc.) A churchwarden has no authority to remove a pulpit without a faculty (7 Jur. N. S. 637).

Pulpit.

Loan for repair of.

Under the 58th Geo. III. c. 45, and the 59th Geo. III. c. 134, § 14, the churchwardens of *any* parish may, with the consent of the vestry and the bishop and incumbent, borrow, on the security of the rates; and by the 59th Geo. III. c. 134, § 27, with the consent of the Commissioners, on the credit of surplus pew-rents, the money necessary for the *repairs* of any churches or chapels. And under section 59 of the former Act they may, with the like consents, so borrow to *enlarge* the churches or chapels in any parish; and (section 40), with the further consent of the patron and the lay impropriator, if any, to *rebuild* the

Enlarging.

Rebuilding.

[1] The fees for faculties in non-contentious cases will probably range from 7*l.* to. 12*l.* according to the length of the faculty. There is also 10*s.* for the stamp.

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parish church, on the same or a new site; but, in both the two latter cases, half the additional accommodation so obtained must be free.[1] A gift by will for the repair of a church is good, and so of monuments in the church; but otherwise as regards tombstones in the churchyard (Rigley's Trusts, 36 L.J.N.S. 147, Ch. & Hoare *v.* Osborne, 1 Law Reports, Equity, 585).

Gift by will for repair of.

Other Parochial Churches.

Besides ancient parish churches, there are "distinct" parish churches, "district" parish churches, "Peel" parish churches, and "new" parish churches. These are governed by the Church Building Acts and the New Parishes Acts.

Private persons may build, when

As to this, see *supra*, Chap. IV., sec. (*e*), p. 36.

Private Chapels

Private chapels and their ministers are maintained by the persons to whom they belong. They need no consecration. They must be licensed by the bishop, and so must the minister (1 Burn, E. L. 296; see Cripps, 171,450); who, however, has no freehold in his office, but may be dismissed, *ad libitum*, by the owner; subject, of course, to any agreement between them (4 Barn. and Cress. 573; Cripps, 171,450). In Bosanquet *v.* Heath, 3 Law Times N.S., p. 290, it was decided that the owner has a right to remove persons therefrom, and to charge for admission.

Free Chapels.

Free chapels are like the preceding; they were of royal foundation; they are exempt from the ordinary's visitation and jurisdiction, except only that the incum-

[1] In the case of churches built under the Church Building Acts, the Treasury may remit the duties of Customs and Excise on materials used in building or repairing, and the Commissioners of Stamps may remit the stamp duties (59 Geo. III. c. 134, §§ 21, 35).

Loans may be obtained from the Incorporated Church Building Society.

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bents are generally instituted by the bishop, and inducted by the archdeacon. They are charged with firstfruits in some cases (Steer, 83).

Proprietary Chapels.

Proprietary chapels have no parochial rights, and are generally unconsecrated; and, if so, can be dealt with by the proprietors as they may think fit (2 Hagg. 50), and they alone have to pay for the necessary repairs; and see Bosanquet *v.* Heath, *supra*. Churchwardens, as such, have no right over proprietary or private chapels (*ib.*). The alms, however, collected in a proprietary chapel belong as of right to the rector of the parish in which the chapel is situated, to be disposed of as he and the churchwardens shall direct (Dowdall *v.* Hewitt, 19 L.T. Rep. N.S. 823, Consis. Ct. Dublin).

Chapels of Ease.

Anciently chapels of ease were not allowed a font at their institution, and were used only for prayers and preaching (1 Burn, E. L. 299). They cannot be consecrated or a minister nominated, without the consent of the incumbent of the mother-church. If they are *ancient* chapels, they are, by custom, repaired by rates on the lands within the chapelry, as in the case of parish churches; but if there be land charged by prescription with the repairs, that must be first resorted to (Gibs. 209). Modern chapels built under the Church Building Acts, if consecrated and having districts legally constituted, are now independent for the purposes of a church-rate under the 31 & 32 Vict. c. 109, § 6. (See Appendix B.)

Clergymen serving Chapels of Ease.

The nomination to chapels of ease rests almost invariably with the incumbent of the mother-church, unless it is otherwise established, either by prescription

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(which presumes all legal requisites), or by an agreement giving compensation to the incumbent, where anything is taken from his income (4 Barn. and Cress. 555).

Conversion thereof into Parish Churches.

A chapel of ease at a distance from the parish church, having a chapelry, township, or district belonging to it, may (if endowed with a competent stipend for the minister) be made by the bishop, with consent of incumbent and patron, a "separate and distinct parish for all spiritual purposes" (1 & 2 Vict. c. 107, § 7); and by § 10, when it has been built by subscription, and endowed and augmented by Queen Anne's Bounty, the Ecclesiastical Commissioners may, with the consent of bishop, patron, and incumbent, make it a distinct parish for ecclesiastical purposes. (See Chap. IV. section (*a*), p. 28.)

Subscription Churches.

Under the 5th Geo. IV. c. 103, § 5, twelve or more householders in any parish, township, or extra-parochial place wherein church accommodation is deficient, may obtain the bishop's consent to build or purchase a church, and provide for the minister out of the pew-rents; but notice is to be given to the patron and incumbent (§ 11).

The subscribers may elect three life trustees for the management of the church, and the nomination of the minister to serve in it (§§ 6, 8, 12) for the first two turns after consecration, or any number of times during forty years.

If the church is built in part by rates, the incumbent of the mother-parish, &c., is to be the patron (§ 13).

At the expiration of the forty years the church becomes a district church of the parish, to be divided by

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the Queen in Council for the purpose, and, failing that, it remains a parochial chapel (§ 17).

Chapels built by subscription, under 5 Geo. IV. c. 103, may (§ 16) be made *district* churches or chapels by the Commissioners, with the consent of the bishop and of a majority of the subscribers, and the patronage then goes to the patron of the original parish (§ 13).

Chapels without Districts.

Under 58 Geo. III. c. 45, § 21, the Commissioners may build or aid the building (when they think it expedient) of additional chapels without districts in any parish or extra-parochial place, to be served by curates nominated by the incumbent of the parish or extra-parochial place, and licensed by the bishop. The salaries of the curates are assigned by the Commissioners out of the pew-rents (§ 64). By 8 & 9 Vict. c. 70, § 7, churchwardens may be appointed to receive the pew-rents and pay the minister's salary, one to be chosen by the minister and the other by the majority of pew-renters, or, if there be no pew-rents, both by the minister.

Parochial Chapels.

A parochial chapel has the rights of burying and of performing the rites of sacrament, and only differs from a church in wanting a rectory and endowment (Degge, pt. i. c. 12). If it has parochial rights (as clerk, chapel wardens), the right of baptism, burial, etc., and the inhabitants have not the right to resort elsewhere for the purpose, and the curate has small tithes and surplice-fees, and an augmentation, it is a perpetual curacy,[1] and the curate is not removable at pleasure (Steer, 83).

Parish churches have been sometimes rebuilt elsewhere, and the old church converted into a chapel of

[1] *Not* a vicarage under the District Church Tithes Act Amendment Act, sec. 2 (Appendix A.), since it is not a parish.

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ease; but the chancels are still repaired by the persons previously liable; and under 1 & 2 Vict. c. 107, § 16, any church or chapel in a parish may be made the parish church, and the latter a chapel of ease or district church; and, moreover (§ 18), the Ecclesiastical Commissioners may, with the consent of the bishop, provide a maintenance for the minister and clerk of the respective churches out of the pew-rents of either of them. (See also 3 Geo. IV. c. 72, § 30, and 2 & 3 Vict. c. 40.)

Under Church Building Acts, repair of.

Chapels built under the Church Building Acts, and which have no districts, are to be repaired by the parishes in or for which they are built (58 Geo. III. c. 45, §§ 70 & 71; and these, it will be seen, are not affected by sec. 6 of the Compulsory Church Rates Abolition Act. (See Appendix B.)

Marriages in Chapels.

Under the 6th & 7th Will. IV. c. 85, § 26, bishops, with consent of patron and incumbent of the parish, may license chapels for marriages, whether they have districts or not (and see 1 & 2 Vict. c. 122, § 33).

Consents to erection of new.

Public chapels for the Established Church may not be built, nor any person officiate therein, without the consent of the bishop, patron, *and* incumbent (3 Hagg. 509; 2 Ambler's Reports, 231, and 4 B. & C. 555), unless under the Church Building Acts, or New Parishes Acts, or other Acts, as already explained. (See Chap. IV.)

Chapel Trustees.

By Peto's Act (13 & 14 Vict. c. 28, § 1), where the term chapel appears to apply to and include chapels of the Church of England as well as dissenting chapels, the necessity of a deed or conveyance is dispensed with upon the appointment of new trustees of any chapel.

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Division 2.—*Patronage of Churches.*

This subject has been anticipated in Chapter IV. and in division 1 of the present chapter, and see Appendices B. and F.

Attention, however, should be particularly called to a most important provision, viz., section 23 of the 8th & 9th Vict. c. 70, extended by the 9th & 10th Vict. c. 88, under which agreements in writing may be made before or during the building of a new church, or previous to its consecration, between the bishop and the patron and incumbent of the *parish* in which the new church is, or is intended to be, built, that the patronage —either in perpetuity, or for a term, or otherwise— shall belong to any corporation, either aggregate or sole, or any person or persons; and such agreements are binding on the parties, their successors, heirs, and assigns.[1]

It is desirable, where the several consents specified can be obtained, to proceed under this Act, in preference to the 1st & 2nd Will. IV. c. 88, and Acts amending it (*supra*, Chap. IV.).

Arrangements for a district for the new church as to pew-rents, and for the right of the incumbent to perform the offices of the Church, can be incorporated in the agreement.

As the Act, however, only uses the word "parish," it is expedient, if not essential, in the case of a new church in any subdivision of a parish to obtain the

[1] By the recent statute (32 & 33 Vict. c. 94) it is enacted that a contract for the assignment of patronage is not to be deemed simoniacal, and certain assignments already made are declared to be valid, and none of the penalties against simony are to attach.

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consent both of the incumbent of the mother-parish and of the subdivision.

Grants of Patronage under the Church Building Acts.

The inducements which the present law offers place it within the power of any persons having a moderate capital at command to *invest* it in the acquisition of church patronage.

In the suburbs of the metropolis, and of almost all the large provincial towns, there are districts greatly in want of increased church accommodation, and where the population is of such a mixed character that a considerable portion of the sittings in any new church which might be erected there would readily let at an average annual rent of 1*l.* a sitting.

A church may be built in such a locality capable of holding about 750 persons, and may be also endowed with the requisite repair fund, for 6,000*l.*; and so in proportion for a larger or less number. Of these sittings, from two-thirds to four-fifths may be rented sittings, the rest being free. The rents from the former would produce from 500*l.* a-year and upwards; and, as the expenses of conducting Divine worship may be raised by annual collections, the incumbent's income from endowment, seat-rents, fees, and offerings would probably exceed 600*l.* Any person so building and endowing a church may have the patronage granted to him in perpetuity.

A house of residence, a repair fund of 150*l.*, and the seat-rents, are accepted as an adequate endowment by the Commissioners.

In such places, therefore, church extension may be

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largely carried out in the way indicated, leaving the energies of the local population comparatively untaxed for purposes of general local church extension, and more free to render aid to localities less advantageously circumstanced. These facilities for church extension vary from time to time in different dioceses; but practically the case stands thus:—

Whenever any necessity, immediate or in immediate prospect, for a new church exists, any person or corporation may (upon providing out of their own resources, aided or not by others, a site and a church, and an endowment and repair fund, satisfactory to the Commissioners) have the patronage assigned in perpetuity or otherwise to him or them, or their nominees (without restriction as to selling it afterwards), unless the patron or incumbent step in and take the burthen of building the church upon themselves. Districts called "particular districts" are assigned to these churches when consecrated. (See p. 36.)

The process already described is equally open to individual clergymen and laymen, and to any number of persons disposed to combine in building a new church under the Church Building Acts. (See Appendix F.)

Grants of Patronage under the New Parishes Acts.

Under the New Parishes Acts the Commissioners can *assign* originally, or afterwards *transfer*, the patronage, either in perpetuity or for one or more nominations, of any Peel district or Peel parish to any person or corporation, or their nominees, in consideration of their contributing to the permanent endowment, or towards the church or chapel of the district, in

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such proportion and manner as the Commissioners approve (6 & 7 Vict. c. 37, § 20).

This power is extended by Lord Blandford's Act to district churches in the patronage of the incumbent of the mother-church *quâ incumbent*, to new parishes constituted after the 29th July, 1856, and to any existing parish or district having neither incumbent nor patron; also to any "benefices" in the gift of the Crown, or of any corporation aggregate or sole, if not exceeding 100*l.* a-year from permanent endowments or 250*l.* from all sources.

But no assignment *in perpetuity* can be made under Lord Blandford's Act for a less consideration than the building a church and endowing it with 45*l.* a-year, or a clear permanent endowment of 150*l.* a-year, or other equivalent benefaction (§ 17); and the consent of the patrons of the "benefices" mentioned is requisite, and if the patron be such *quâ incumbent* of another "benefice," or if there be no patron or incumbent, the consent of the bishop is also necessary (§ 18).

The patronage of a "benefice" thus acquired in perpetuity, if of a certain value, cannot be subsequently sold for thirty years, unless the proceeds be added to the living (§ 21).

Illustrations of the conditions which the Commissioners require in these cases will be found in Appendix F.

The Commissioners have no power to *transfer* the patronage of existing benefices from persons or corporations previously possessing it without their consent, unless where it is vested under the Peel Acts in the

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Crown and bishop alternately. The present law gives full powers to enable corporations aggregate and sole, ecclesiastical and lay, tenants for life, tenants in tail, and incapacitated persons, voluntarily to *surrender* rights of patronage; but practically, these powers are of little use, and yet there are several thousand benefices worth less than 200*l.* a-year.

Division 3.—*Pews and Sittings.*

In Old Parish Churches.

The distribution of seats, in the absence of any prescription by custom, or any faculty, and including all (except the chief seat) in the chancel (1 B. & Ald. 498) which belongs to the rector or vicar, in practice generally rests with the churchwarden; but only as the officers, and subject to the control, of the ordinary (Steer, p. 30; Rog. Eccl. 179), who has the primary and sole authority (3 St. Blackst. 42). The minister and vestry have no authority in the matter (2 Add. 425). By custom (as in London) the churchwardens may alone have the ordering of the seats (Wats. c. 39).

Probably the vicar's family are also entitled to a seat in the chancel (Johns, 242). It is doubted whether a perpetual curate, and therefore also a vicar under the recent Act, is entitled to a seat in the chancel; but if not, the ordinary would allot them proper pews for themselves and families (2 Curt. 353).

All persons, *whilst parishioners*, are, at common law, entitled to accommodation in the parish church without payment (Steer, p. 31), *i.e.* to be *seated*, but not to a *pew*, the pews being the common property of the parish; non-parishioners have no right to sittings unless by prescription, and *quære* even then (*ib.* p. 31).

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Cannot be let unless by Act of Parliament.

The churchwardens cannot let or sell the pews unless under an Act of Parliament: nor can a private person do so, unless his pew is attached to a *house* in the parish; which may be, either by faculty from the ordinary or by prescription, which presupposes a faculty (Sir J. Nicholl in Parliam *v.* Templer; 3 Phil. 515), evidenced by enjoyment and repairing time out of mind,[1] in which case the pew goes with the house, and cannot be severed from the occupancy (1 Hagg. C.R. 314, 323; 5 B. & C. 1); but then it can only be let to a resident in the parish (*ib.*). There may also be a prescription for a particular seat or seats in a pew (Prid. Chwdns. 303).

Subject to the private rights already mentioned, it is the duty of the churchwardens to make *all* the seats available for the parishioners, having regard to their station and condition (Fuller *v.* Lane, 2 Add. 425, and see also 1 Hagg. Cons. Rep. pp. 314, 316); and when requisite to this end, they may place and displace at pleasure, but not, however, capriciously (Rogers, Eccl. Law, 171, 174), and may fill up allotted pews or sittings which are not occupied,[2] or remove persons intruding on seats already appropriated (2 Moody and Robinson, 384); but if a parishioner has enjoyed a seat for a time, they should give him previous notice of their intention to fill it up, and suffer an opportunity for objection (6 Jur. N.S. 278).[3]

[1] *Quære* whether the 2d & 3d Will. IV. c. 71, for shortening the period for prescription to twenty years, applies to pews (Mart. Convey. vol. iii. p. 274, n.).

[2] No person may keep a pew or seat unoccupied. (See 8 Law Times, N.)

[3] The 32 & 33 Vict. c. 94, provides for the surrender of pews by private owners to the bishop or the Ecclesiastical Commissioners.

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In any parish, district parish, or extra-parochial place, the bishop may order a third service, if there is not otherwise sufficient accommodation; and in such case he may also require the churchwardens to *let* for such service pews not held by faculty or prescription, at rates sufficient to provide a curate's salary thereout (58 Geo. III. c. 45, §§ 65 & 66). May be let for third service.

The churchwardens are to keep the pews in repair out of the church-rates, unless where any private person is liable by prescription (Degge, pt. i. c. 12). Repair and Rebuilding of Pews.

No pew can be built or pulled down, or heightened, or, it is conceived, even lined, painted, or repaired, without the consent of the minister and churchwardens, or by faculty (Sir J. Nicholl, 3 Phil. 169; Wats. c. 39); and if a seat be taken away by a stranger, the churchwardens (not the minister) may bring an action against him (*ib.*).

A faculty is necessary to repew a church, or erect galleries, or make material alterations therein (Cardinall *v.* Molyneux, 7 Jurist, N.S. 254); but trifling alterations may be made without faculty or license. Repewing Churches.

An action lies for disturbance in the enjoyment of a pew to which a man is entitled by faculty or prescription (5 B. & Ald. 361), and a possessory right is sufficient to maintain a suit against a mere disturber (2 Curt. 356). If a parishioner require to be seated, his remedy is to cite the churchwardens to the Ecclesiastical Court, to show cause why they have not seated him (1 Hagg. C.R. 317). Remedy as to.

By the 43d Geo. III. c. 108, § 5, in all parochial churches or chapels thereafter to be erected, *ample provision is to be made for the decent and suitable accommodation of all persons unable to pay for the same.*

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In Modern Churches under Church Building Acts.

In modern churches and chapels under the Church Building Acts and New Parishes Acts, pew-rents are to be taken according to scales fixed by the Commissioners;[1] or, in case of the churches of patronage districts formed by the bishop only, by the trustees and bishop, as already explained. These are to be collected by the churchwardens, and the stipend of the minister and clerk is generally provided for out of them. This stipend may be afterwards augmented (3 & 4 Vict. c. 60, § 5). Sittings are appropriated for the minister and his family and servants, and for the church or chapel wardens, and not less than one-fifth of the whole sittings, if the church be built wholly or partly out of rates, are to be free (58 Geo. III. c. 45, § 75; 59 Geo. III. c. 134, § 30).[2] Subscribers, if parishioners, are to have choice of pews at fixed rates (§ 76) in churches built under that Act; and pews may be let or assigned to parishioners *only* in the first instance; but, failing them, to inhabitants of adjoining parishes or places, but only for a year. Notice of vacant pews should be given, on the church doors, for six successive weeks at the end of each year (59 Geo. III. c. 134, § 32; and 3 Geo. IV. c. 72, §§ 24 & 25). Pews may be assigned without rent to subscribers under the 1st & 2d Will. IV. c. 38, § 21.

Loans raised upon pew-rents.

The *surplus* pew-rents, after payment of the minis-

[1] These scales may be altered (59 Geo. III. c. 134, § 31) by the churchwardens, with the consent of the patron and incumbent, and the direction of the bishop; and in case of patronage districts, by the trustees and the bishop.

[2] The Commissioners generally require one-third, and never less than one-fifth, of the sittings to be free, in churches built under the Church Building Acts.

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ter's and clerk's stipend, and other expenses, may be charged with the payment of any loan raised towards the building by the churchwardens, with the consent of the Commissioners (59 Geo. III. c. 134, § 27). This is a most important provision, and may be made very useful for raising money towards building new churches.

Pew-rents, how payable.

The pew-rents are to be paid in advance, *i.e.* one year's rent on admission, if at Lady-day or Michaelmas, or if at any intermediate period, then the proportion of the half-year's rent, and a half-year's rent in addition. Thereafter the payment is to be in advance half-yearly, at Lady-day and Michaelmas. The pew is forfeited by non-payment in advance for two following half-years (59 Geo. III. c. 134, § 82).

The churchwardens may, if pew-rents are in arrear for three months, and notice in writing demanding payment has been given, enter and let or sell the pew, and apply the proceeds in payment of arrears and expenses, or they may sue for and recover the arrears (58 Geo. III. c. 45, § 79).

Cesser of pew-rents.

When a *permanent* provision is made in lieu of pew-rents, in whole or in part, the Ecclesiastical Commissioners may direct such pew-rents to cease (14 & 15 Vict. c. 97, § 1).

Under the New Parishes Acts

In the case of churches to which districts may be assigned under the New Parishes Acts by the Ecclesiastical Commissioners, *after* the 29th of July, 1856 (the passing of Lord Blandford's Act), *one-half*[1] of the

[1] The power of the Church Building Commissioners to require a less proportion of the sittings to be free is vested in the Ecclesiastical Commissioners; and, whenever expedient, they will exercise that power upon a proper representation being made, which should be done in an early stage of the proceedings.

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Free Sittings.

sittings must be free, and be as advantageously situated as the others; for "if it shall appear to them that sufficient funds cannot be obtained from other sources," they may, with the bishop's consent, declare that annual rents be taken in respect of any pews or sittings in the church, according to a specified scale; the proceeds to be applied to the repair of the church, and the maintenance of the minister and the services, and the endowment thereof (19 & 20 Vict. c. 104, § 6). These scales may be altered (see § 8). And by § 7, upon a permanent endowment being provided for any church, a proportionate number of the rented sittings shall be free, or the scale reduced in proportion; but if any loan has been raised on the pew-rents, that is to be first repaid. (See also 14 & 15 Vict. c. 97, § 1.)

The right of Peel districts and Peel parishes, formed *prior* to the 29th July, 1856, to pew-rents, has been already mentioned as being acquired by means of a grant from the Church Building Commissioners (under the 6th & 7th Vict. c. 37, § 24).

Parishioners of new parishes and districts formed prior to the 29th July, 1856, under the Church Building Acts, or after that date under the New Parishes Acts, who held sittings in the old parish church, retain the right to them until they get sittings assigned to them in the new church (19 & 20 Vict. c. 104, § 5). *Other* parishioners of the new parish, it is conceived, have no right to sittings in the old church; unless, perhaps, by faculty or prescription they are entitled to pews attached to an ancient messuage within the remaining limits of the original parish. (See 6 & 7 Vict. c. 37, § 14).

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Where a new church is substituted for an old church, inquiry is to be made as to pew-rights in the old church, and sittings in the new are to be assigned accordingly (8 & 9 Vict. c. 70, § 1, and 59 Geo. III. c. 134, § 40); and see 1 & 2 Vict. c. 107, § 16, as to pew-rents in case of a substitution of churches under that Act; and in cases of union of benefices, see 18 & 19 Vict. c. 127, § 13. Where Church substituted.

For further information as to pews, see Shelford's Real Property Statutes, p. 119 (7th edition), and Oliphant on Pews.

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CHAPTER VI.

Officers of the Church.

Section 1.—*Churchwardens.*

Definition. They are parish officers, appointed to keep the church in repair and good order, to provide for the orderly performance of divine worship and the administration of the sacraments, and for the preservation of the property belonging to the church (Burn, Eccl. Law, p. 398).

How many. There are generally two churchwardens, but by custom there may be only one, or more than two, but there cannot be a custom to have *no* churchwardens (Smith's Par. p. 80).

Status. They are *ex officio* overseers of the poor in parishes which maintain their own poor, and members of the select vestry, if any (43 Eliz. c. 2, § 1; 59 Geo. III. c. 12, § 1; and under the Metropolis Management Act, § 2).

Who may be appointed. The parishioners may appoint whom they please; but, perhaps, the persons appointed should be rate-payers or householders, resident or non-resident[1] (and see 9 Jurist, O.S. 1081, as to residence; 3 Steph. Comm. 40).

[1] Residents in a new parish can be appointed churchwardens of the original parish (New Parishes Act, 1856, § 15), the office being partly civil (and see *infra*); but not *vice versa*.

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Aliens, naturalized subjects, Papists, Jews, officers of the Court of Bankruptcy, persons under ten years of age, and convicted felons (Prid. Chwdns. p. 9.). Who may not be appointed.

Those who occupy any *house* in the parish *must* serve, though not actually resident (1 Hagg. 329); and each of three partners carrying on trade in the parish may be held liable, though not resident (1 B. & C. 178). It thus appears that all resident parishioners, and all occupiers of premises in the parish, though non-resident, *i.e.*, though they take their meals and sleep out of the parish, can be compelled to serve. Poverty and bodily infirmity are neither excuses nor disqualifications. If a churchwarden cease to reside in the parish, another may be appointed in his place; but he is not *ipso facto* disqualified (9 Jur. O.S. 1081). Who must act if appointed.

Peers, Members of Parliament, and clergymen, Roman Catholic clergy taking the oath, etc. (31 Geo. III. c. 32, § 8), sheriffs, justices of the peace, if acting, aldermen (Prid. Chwdns. p. 10), dissenting ministers (52 Geo. III. c. 155, § 99), barristers, attorneys, medical men, persons residing out of the parish, though occupying *lands* in it, all officers in the army, navy, or marines, all soldiers in the militia, commissioners and officers of customs and excise, the Postmaster-General and his officers, churchwardens of other places, and Quakers are exempt (Prid. 10—12; Steer, 128). Dissenters and Roman Catholics may serve by deputy, duly approved (1 Will. & Mary, c. 18; and 31 Geo. III. c. 32, § 7). Who are exempt.

Usually, but not necessarily, in Easter week and on Easter Tuesday (Can. 90). When chosen.

In original parishes they are chosen by the minister

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and parishioners; and, if they cannot agree, the minister chooses one and the parishioners in vestry the other (Steer, 129). (As to new parishes and districts, see *infra.*) Where a parish has been divided into new parishes or districts, the inhabitants residing in the new division, of whatever *character*, may still vote in the election of wardens to the mother-church (Reg. *v.* Archdeacon of Exeter, 1 N.R. 267, and 32 L.J.Q.B. 90), for they are still *civil* officers for the whole of the original parish.

If the incumbent is *deprived*, the parishioners appoint both. If he be absent, the curate appoints one (2 Stra. 1246).

By custom. Both may by custom be appointed by the parishioners, or by a select vestry (16 L.J.N.S.M.C. 135), or by the old churchwardens, or particular parishioners (Steer, 129), or one new warden only in each year, or one only at a time. In some places the lord of the manor appoints by prescription (2 Inst. 653); in others the outgoing churchwarden nominates two persons, of whom the incumbent selects one (35 L.J.N.S.C. p. 332). Where parishes are divided into townships, tithings, etc., then, by custom, many church or chapel wardens are chosen, each of whom, though chosen by and for the respective districts, represents the whole parish (Prid. Chwdns. p. 21).

Term of Office. Churchwardens continue in office until their successors are sworn in (1 Burn, E.L. 410; 31 L.J.N.S.

Legality of Election. M.C. 135). The legality of their election is to be tried in the courts of common law (7 Ad. & El. 259; Cripps, 201).

Mandamus to elect. A mandamus will lie from the Queen's Bench to

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compel the election by the parties entitled to elect, and to compel the admission by the ordinary, even though the validity of the election is questioned; and if there be a double return, the ordinary must swear all, and let them try their right elsewhere, his duty being ministerial only (Steer, 131, 133). If the person elected refuse to act, he may be proceeded against in the Ecclesiastical Court.

Declaration by.

By the 5th & 6th Will. IV. c. 62, § 9, they must subscribe before the ordinary a declaration faithfully to act, but they may act previously (Vin. vol. iv. p. 527).

Removal.

They are, it is said, removable for misconduct by those who appointed them, on complaint to the ordinary (2 Add. 130), and they may be re-elected, but in that case cannot be compelled to serve without good reason and a precedent for so doing (1 Burn, E.L. p. 401a).

Duties.

Present-ment.

They are twice a year to present to the ordinary, at his visitation, whatever is wrong or irregular, whether in the parson or parishioners; and they may be compelled to do so by the bishop. Thus, as to the parson, if he is irregular in the performance of divine service, or alter it, or omit part of it, or add things not authorized by the rubric, or if there be not at least one sermon on the Sunday (Can. 45); if he neglect to visit the sick or administer the sacraments; if he is non-resident without license, or lead an immoral life. They are also to attend regularly, and to keep order in church; to see that curates are duly licensed; that no strangers preach in the church unless in holy orders; and that there is no walking about, talking, or irre-

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verent behaviour during divine service (Can. 18), or loitering in the churchyard or porch (Can. 19).

To this end they may eject any persons who shall interrupt the service or disturb the congregation, provided they use no unnecessary violence (Prid. Chwdns. 10 ed. p. 339, and cases there). Indeed, they have been held justified in preventing a clerk who had been *wrongfully* dismissed from forcing himself into the clerk's seat, and in turning him out of the church upon his persisting (*ib.*), and in taking a person's hat off in church during service (*ib.* and see Can. 18).

In general terms the churchwardens are to present *all* breaches of ecclesiastical law within their parishes or districts which may come to their knowledge (*ib.* p. 384).

They have no power to interfere in the actual *administration* of divine service, except only to collect the alms at the offertory (1 Consist. Rep. 173). These alms are at the disposal of the minister and churchwardens. Their office is "one of observation and complaint, not of control," except as to the ecclesiastical property of the parish (Const. R. 173). They ought not, without consent of the minister, to order the bells to be rung, except for divine service (6 Jur. N.S. 1353; 6 Law Times, N.S. 580; 2 Bing. N.C. 492); nor are they entitled to the key of the church, the custody of which belongs exclusively to the minister (3 Hagg. Ecc. 173); and if they get or make a key, they will be ordered to give it up to the incumbent (7 Jur. N.S. 673). If refused access, they must complain to the proper authorities (3 Hagg. Ecc. 173; 6 Jur. N.S. 1353).

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They have no rights over *proprietary* chapels in the parish (Bosanquet *v.* Heath, 3 Law Times, N. S. 290).

Guardians of Church and goods thereof.

They are the guardians of the church and its goods and appurtenances, and legal representatives of the parish body, and they may bring and defend actions accordingly. (See Chap. VII.)

Summon Vestries.

They summon all vestries, with the consent of the minister. (See Vestries).

As to pews, see under that head; Chap. V. Division 3, *ante*. As to registers, see Chap. VII.

Care of Benefice during Vacancy.

They have the care of the benefice during vacancies or sequestration, and are to see that it is duly served by a curate (Steer, 137).

To provide for Divine Service.

They are to provide, at the charge of the parish, and the discretion of the minister or ordinary, things necessary for divine service and the sacraments. (See next chapter.)

Repairs of Church.

They should see that the church and churchyard, with its fences, churchways, &c., are kept in proper repair, and apply for church-rates when necessary.

Jury Lists.

They must also sign the jury lists, under 7 Geo. IV. c. 50, §§ 8 & 9; and are liable to penalties for not doing so, under sec. 45.

Other Rights and Powers.

The property of the parish is vested in the churchwardens for the time being, and they can sue and be sued as a corporation in respect of it (T. Smith's Parish, 99). They cannot, however, appropriate it, or make gifts or grants out of it, without the consent of the parish (Lambard, 73). Though they may accept gifts or sue a wrong-doer without such consent (Year-Book, 13 Hen. VIII. fo. 10).

Cannot act separately.

They cannot act separately—all must concur; and

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they must also join in suits. (See Fry *v.* Treasure, 11 Law Times, N.S. pp. 389, 753.) When, however, a churchwarden is personally proceeded against for an ecclesiastical offence, it is not necessary to make his co-churchwarden a defendant, although the offence were committed in an official capacity (Adlam *v.* Colthurst, 36 L.J.N.S. Ecc. pp. 14, 15; L.T.N.S. 635).

If they make wrongful payments, they are liable to penalties. (See 7 & 8 Vict. c. 101, § 32.)

They cannot bind the parish in perpetuity, as by borrowing money, unless under an Act of Parliament.

Custody of Deeds, etc.

They are entitled to the possession of all parish books (except register books) and deeds (4 A. & E. 799). There is no *general* right of the parishioners to inspect them (Reg. *v.* Churchwardens of Daventry; 5 Jur. N.S. p. 940, and 28 L.J. 272, Q.B.). *Special* grounds for such inspection must be shown. (See also 52 Geo. III. c. 146, § 5, and 58 Geo. III. c. 69, § 6.)

By the 22d Vict. c. 1, it is their duty, if persons having the care of places of burial neglect to comply with Orders in Council relating thereto, upon written directions from the Secretary of State, to enforce such order, and persons obstructing them commit a misdemeanour.

Churchwardens in "Distinct" and "District" Parishes.

In "distinct" and "district" parishes, formed under the Church Building Acts (58 Geo. III. c. 45, § 73, and 8 & 9 Vict. c. 70, § 6), two "fit and proper persons" are to be appointed churchwardens every year, one by the incumbent, and the other by "the inhabitant householders" in the district; and they continue in office until their successors are in like manner appointed.

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In "district" chapelries and "consolidated" chapelries, it is further provided that the churchwardens shall "reside within the district," and the appointment of one is to be by the "householders" residing in such district chapelry and consolidated chapelry (8 & 9 Vict. c. 70, § 6). In "District" Chapelries and "Consolidated" Chapelries.

For churches under the 1st & 2d Will. IV. c. 38, "two fit and proper persons" are to be appointed, one by the minister and one by the pew-renters (§ 16); and in case of chapels of ease, endowed and made separate parishes, two "inhabitants" of the new parish, being members of the Established Church, are to be annually appointed, one by the minister and one by the inhabitants in vestry (§ 25). In particular Districts. In "separate" Parishes.

Provision is also made as to churchwardens of churches or chapels without districts (8 & 9 Vict. c. 70, § 7), built upon sites conveyed to the Commissioners, in which cases they are to be chosen annually, one by the minister and the other by the pew-renters, or a majority of them, at a meeting summoned for the purpose. Chapels without Districts.

In "Peel" parishes and "New" parishes under the New Parishes Acts, *and, it is conceived, in all districts which have become new parishes under Lord Blandford's Act*, §§ 14, 15, "two fit and proper persons," being members of the United Church of England and Ireland, are to be annually chosen churchwardens, one by the incumbent and the other by the "inhabitants residing in the new parish," and being qualified as in the case of an election in the old parish, and at a meeting summoned as the minister shall, in all respects, direct: and such churchwardens are to do all In "Peel" Parishes and "New" Parishes.

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things pertaining to the office in ecclesiastical matters in the new parish (6 & 7 Vict. c. 37, § 17; 19 & 20 Vict. c. 104, § 29).

Perhaps where, before a district became a parish under Lord Blandford's Act, the election of churchwardens was by others than those who elect according to section 17 of the Peel Act of 1843, the peculiar mode of choice is a "special" right, saved by the 29th section of Lord Blandford's Act; and, therefore, churchwardens are in such cases to be appointed as if such districts were still governed by the Acts which governed them prior to their coming within the operation of Lord Blandford's Act.

The attention of *all* churchwardens is called to the 23d and 24th Vict. c. 51, requiring them to make annual returns of rates, &c., levied. (See Appendix B. No. 2.)

Close of Office.

At the end of their year, or within a month at most, they are to give up, before the vestry, a just account of their receipts and payments (Can. 89).

The account, when allowed, should be entered in the Church Book of Accounts. Any balance in hand is to be handed, with the Book of Accounts, to their successors.

If there be a deficiency, the successors may pay it; but this must be only in respect of disbursements *sanctioned* by the parish *before the debts* were incurred, or, at all events, within the current year in which they were incurred (Prid. Churchwardens, p. 410). The debt or payment without such sanction is illegal (*ib.*).

If the retiring churchwardens refuse to account,

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they may be presented at the next visitation, or proceedings be taken against them in the spiritual Court (Can. 89), or the Courts of Common Law (2 B. & C. 271), *sed quære.*

They must also give an account of the church goods, which they must deliver over with the keys of the parish chest (Can. 89).

Where money has been borrowed on the security of the church-rates, the accounts of the churchwardens in reference to the receipt and expenditure of such money are to be audited annually by the auditor of the Poor Law Union within whose district the parish is situated, unless another mode of audit is provided by Act of Parliament. (See the Compulsory Church Rate Abolition Act, sec. 3, Appendix B.)

Section 2.—*Sidesmen.*

Who.

In the ancient synods, the bishops used to summon men out of each parish to give information of the disorders of the clergy and parishioners. In process of time these persons became standing officers, called "Synodsmen," "Sidesmen," or "Questmen." The duties of their office have now, however, devolved upon the churchwardens, and the office has consequently become practically, though not legally, extinct, except in the larger parishes.

Office almost obsolete.

How elected.

They are elected annually by the minister and parishioners, and their qualifications and exemptions and duration of office are the same as in the case of churchwardens, whose assistants they are, unless there is a special custom to the contrary.

Duties of.

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Declaration by.

, By the 5th & 6th Will. IV. c. 62, § 9, they make a declaration before the ordinary, previously to taking office, in like manner as churchwardens.

Section 3.—*Parish Clerk.*

How chosen.

Originally the parish clerk was chosen from the poorer candidates for the clerical office, and every minister had at least one to assist him (Steer, 141). Generally he has his office for life (2 Stra. 776). By the 7th & 8th Vict. c. 59, § 2, it is enacted, that on any vacancy in this office in any district, parish, or place, the rector or incumbent, or (with the incumbent's consent, § 3) the other persons entitled to elect

Clerk in orders.

may appoint a person in holy orders; who, however, has no freehold, but is licensed and removable like an ordinary stipendiary curate. (See next page, note 1.)

Qualification.

By Canon 91, he must be twenty years of age at least, and known to the incumbent "to be of honest conversation, and sufficient for his reading and writing, and also singing, if it may be."

By whom appointed.

Prima facie, by the incumbent, or, during his suspension, or a vacancy, by the licensed curate; and (by Canon 91), in the City of London, by the parson, or vicar, or minister for the time being (Steer, 142). By custom, in some places, the choice rests with the parishioners in vestry.

Admission.

A verbal appointment is sufficient (*ib.*).

The clerk should be licensed by the ordinary, and sworn to obey the minister. But this is not necessary (*ib.* 143).

Fees, etc.

These depend upon custom in ancient parishes and

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places. Parish clerks cannot claim any certain allowance; they can only have their accustomed wages, for which, as well as their fees, they are to sue in the temporal courts, but it is otherwise where they are appointed by the minister (1 Lee, 353).

Dismissal.

This may be by those who appointed him, for sufficient cause (1 Cowper's Rep. 370); but if unjustly dismissed, a mandamus lies to the churchwardens to restore him.[1] By the 7th & 8th Vict. c. 59, § 5, if any parish, church, or chapel clerk, not in holy orders, be guilty of "any wilful neglect or misbehaviour in his *office*, or by reason of *any* misconduct, he is unfit to hold the same," the archdeacon, on complaint, may summarily hear it and determine thereon, and, if true, may declare the office vacant; and such clerk may also be removed from premises in right of his office (§ 6). But the due exercise of the office by a competent deputy is not a "wilful neglect," &c. A parish clerk may appoint such deputy (Strange, 942).

Deputy Clerk.

In Districts under the Church Building Acts.

Under the Church Building Acts the clerk is to be annually appointed by the minister (59 Geo. III. c. 134, § 29; Jackson *v.* Courtenay, 27 Law J. Q. B. 37). There is no provision in the case of churches under the 1st & 2d Will. IV. c. 38, and the 1st & 2d Vict. c. 107.

Division of Fees in such cases.

When a parish is divided by the Church Commissioners, the fees arising in the divisions go to the clerks of such divisions (59 Geo. III. c. 134, § 10). The Commissioners fix the fees, with the consent of the

Clerk in orders.

[1] A parish clerk, if in orders, may be suspended or removed like a stipendiary curate, with a similar right of appeal (7 & 8 Vict. c. 59, § 2).

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bishop (§ 11),[1] and may assign a salary to him out of the pew-rents.

In Peel Parishes and New Parishes.

In Peel parishes, and new parishes, the clerk "is appointed by the incumbent for the time being" (6 & 7 Vict. c. 37, § 9; and 19 & 20 Vict. c. 104, § 9, Lord Blandford's Act), and is also removable by the incumbent, with the consent of the bishop, for any misconduct (*ib.*; and see Jackson *v.* Courtenay, 27 Law Journ. Q. B. 37).

Section 4.—*Sexton.*

How appointed.

He is appointed by the parishioners, or, by custom, by the minister (5 Ad. & E. 584; but see 4 Exch. 234). A woman may be appointed. The salary depends on custom.

In New Parishes.

In new parishes, the sexton is appointed and removable, as in the case of parish clerks, and his fees and salary are in like manner assigned (19 & 20 Vict. c. 104, § 9). As to churches under the Church Building Acts, see 59 Geo. III. c. 134, §§ 6, 10, & 11.

Duties.

The sexton's duties are to sweep the church and keep it clean, to dig the graves, deposit the coffins therein, and make good the surface soil, toll the bell, and, under the churchwardens' directions, to provide for the lighting, the bread and wine and other necessaries for the communion, and water for baptizing, to attend church during service, open the pews, and assist in keeping order (Prid. Chwdns. p. 135), and to perform such other (like) duties as the churchwardens may

[1] Under this section, the Commissioners may fix the fees for *any* parish of both clerk and sexton.

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appoint. He is paid by them, and has also, by custom in some cases, certain dues.

Term of Office.

He holds his office for life, or otherwise, according to custom (Steer, 148); where he holds office for life, he cannot be removed by the Ecclesiastical Court, though punishable by it (2 Rolle's Rep. 234).

When Sexton and Clerk the same person.

When the sexton and clerk are one and the same person, the incumbent, *prima facie*, alone engages and dismisses him.

Where the offices are separate, and the sexton is not also gravedigger, the presumption is that the churchwardens, and where he is also gravedigger, that the incumbent and churchwardens, engage and dismiss him (Cripps, 227).

Section 5.—*Beadle.*

Appointment.

Is appointed by the vestry, whose messenger and servant he is; he holds office during their pleasure,

Dismissal.

and the vestry may at any time dismiss him for misconduct (1 Burn, Eccl. Law, 415r).

Duties.

To attend vestries and give notice of them, to obey the vestry generally, and to assist the churchwardens and overseers when commanded. His salary is payable out of the church-rate.

Section 6.—*Organist.*

Organist.

It is said that the organist is to be appointed by the parishioners (Toul. Smith's Parish, p. 436, n.); but it is conceived that this is only where his salary is paid out of the rates; and that in any other case the appointment rests with the incumbent, unless the in-

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come proceeds from an endowment by which the appointment is otherwise regulated.

The parish are not *bound* to appoint an organist, even when an organ has been erected under a faculty (1 Hagg. Ecc. 10), nor to provide, or pay for the repair of, an organ (1 Hagg. C. R. 198; 3 Hagg. Ecc. 10), nor to pay the organist's salary (14 Law J. Q. B. 34; and 1 Burn, 3748; and see Chap. VII.)

Singers and Singing.

The control as to the organ and the singers and singing rests, subject to the ordinary, with the incumbent or officiating minister.

He alone is to direct when the organ (if any) shall and shall not play, and the children chant or not, and this although the organist is paid and children managed by the churchwardens. The latter must appeal to the ordinary if the minister introduce irregularities (Wilson *v.* MacMath, 3 B. & A. 250; 3 Phill. 90).

Note.—It is well, in appointing an organist, to have a special agreement signed, defining his duties, his salary, its source and mode of payment, and the mode of terminating his appointment. In the absence of such an agreement a *yearly* hiring would no doubt be presumed determinable on six months' notice.

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CHAPTER VII.

The Goods and Ornaments of the Church.

The care of everything in the church belongs to the churchwardens, and the goods, chattels, and utensils of the church are vested in them for the use of the parishioners, and are to be kept in an orderly and cleanly state (Ld. Raym. 138; 2 Bing. N. C. 402). Care of.

By the Canons (80 to 85) the churchwardens are to provide and keep in repair, at the expense of the parish, all such things as may be necessary for the decent and orderly celebration of the services and offices of the church, and the due administration of the sacraments. What necessary. Also a convenient and decent communion-table, which is to be of wood, flat and movable, and is to be covered with such a decent covering as the ordinary thinks fit, and with a fair linen cloth, without lace or embroidery, to be spread thereon at the ministration of the Lord's Supper. Cloths of various colours may, however, be used during the performance of divine service at other times, and the churchwardens *may* also provide a credence-table (Liddell *v.* Westerton, 5 Weekly Rep. 470). Communion-table. Credence-table.

A rood screen may perhaps be also provided (but see Westerton *v.* Liddell, 10 Weekly Rep. 167). Rood screens.

A cross may be annexed to a rood screen, or placed Crosses.

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elsewhere in the church, as a mere decorative ornament; but it may not be affixed to the communion-table, or be used in any of the services (Liddell *v.* Westerton, *supra*).

Incense. The use of incense, although an "ancient, innocent, and pleasing custom," has no authority from the book of Common Prayer, and is accordingly illegal (Martin *v.* Mackonochie, in Ct. of Arches, 37 L.J.N.S. Ecc. p. 17).

Other ornaments. The word "ornaments," in the introductory rubric to the Common Prayer, has been held to mean only the several articles used in the services and rites of the Church—vestments, books, cloths, chalices, patens, and the like; articles not so used, although articles of decoration or embellishment, are not "ornaments" within the meaning of the rubric (Liddell *v.* Westerton, *supra*). This rubric refers to the first Prayer Book of King Edward VI. as the sole binding authority on the subject of the ornaments of the church and the minister thereof (same case). This construction of the rubric has been confirmed by the judgment of the Privy Council in the recent case of Martin *v.* Mackonochie (38 L.J.N.S. Ecc. 1), which emphatically determines that no ornaments, except such as are merely subsidiary to the services,[1] which are not prescribed by the first Prayer Book of King Edward VI. can now be legally used.

The rubric as to ornaments

It still, however, remains to be decided whether *all* the ornaments prescribed by the Prayer Book last mentioned are necessarily to be used, and this point is of the utmost importance in reference to the question of vestments. It has been contended that the word "retain" in the rubric cannot operate to revive or restore

Vestments.

[1] Such as an organ, a credence-table, seats, hassocks, &c.

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any ornaments which were not in use at the time the rubric was made, viz., the 14th year of Charles II. If this be so, the vestments to be worn by ministers will be those prescribed by the Canons of 1604, and the advertisements issued in the reign of Queen Elizabeth, under sec. 25 of 1 Eliz. c. 2, in 1564-5, and referred to in the Canons. These vestments are the surplice and hood in all cases, except at the ministration of the communion in cathedral churches, when the principal minister is to wear the cope.[1]

On the other hand, the rubrics of the first Prayer Book of King Edward VI. require that the priest at the communion is to put on him "a white albe plain with a vestment or cope," and the assistant priests and deacons are to wear "albes with tunicles." The vestment of the priest is to be worn during the communion service, though the communion be not actually administered. When the bishop celebrates the holy communion in the church, or executes any other public ministration, "he shall have upon him, beside his rochet, "a surplice or albe, and a cope or vestment, and also "his pastoral staff in his hand, or else borne or "holden by his chaplain." At other times than the communion, ministers are to wear the surplice.

It should be remembered that the rubric has the

[1] The rubric, it may be remarked, is inserted after the commencement of the order for Morning and Evening Prayer, and it may be questioned whether it applies to any other portion of the Prayer Book than the orders for Morning and Evening Prayer, and the offices administered in the course of those orders. Upon this supposition, it would only authorize ornaments used in those services, and the question of the eucharistic vestments would have to be decided on other grounds.

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force of an Act of Parliament, and that no vestment inconsistent with or unauthorized by it can be legally worn, however much its use may be apparently sanctioned by long custom. The black gown is an instance of such a custom; it is, however, quite unauthorized, if preaching be a "ministration," as doubtless would be held, and its use should be discontinued (Prid. Chwdns. p. 366).

Surplice. It is the duty of the churchwardens to provide for the minister a decent and comely surplice; and if any question arise in regard thereto, it is to be decided by the ordinary (Can. 58). From what has been already said, it will be seen that it is open to doubt whether a white albe plain with vestment or cope ought also to be provided.

Pulpit and Reading-desk. A comely and decent pulpit is to be set in a convenient place within the church, at the discretion of the ordinary, and a convenient seat for the minister to read service in (Can. 83).

Font. A font of stone, with a proper cover to it, is to be placed at or near the west end of every church and chapel where baptisms are to be administered (Can. 81).

Chest for Alms. The churchwardens are also to provide a strong chest, having three keys, one to remain in the custody of the parson, vicar, or curate, and the other two with the churchwardens. The chest is to be set in the most convenient place for receiving alms (Can. 84).

Chalice, Wine, Bread, etc. The churchwardens must also provide a chalice or communion-cup, with one or more flagons (Lindw. 252), a sufficient quantity of fine white bread and of good wholesome wine for the communion, which wine is to be brought to the communion-table in a "sweet

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standing pot of pewter or purer metal," also a basin to receive alms at the offertory. They *may* also furnish two or more candlesticks, not as "ornaments," but to be lighted only when necessary (4 Weekly Rep. 167, confirmed by the Privy Council in Martin *v.* Mackonochie).

Bible, Prayer Book, Homilies.

There must also be provided a large Bible, a true printed copy of the Book of Common Prayer, and the Book of Homilies allowed by authority.

Bier.

Also a bier for the dead.

Table of Degrees of Marriages.

The table of degrees is to be publicly set up in every church (Can. 99).

The Commandments.

The ten commandments are to be set up at the east end of every church or chapel, so that the people may conveniently see and *read* them (Westerton *v.* Liddell, *supra*, Can. 82).

Registers, etc.

The churchwardens are directed to supply register books for baptisms and burials (those for marriages are supplied by the registrar, at the cost of the parish), and a book in which the names and licenses of strangers who preach in the church are to be recorded (Can. 52).

Book of Accounts, etc.

By Canon 87, a book for the churchwardens' accounts, a terrier of all the glebe lands and other possessions belonging to the church, and a chest with locks and keys, to keep them in, are also to be provided.

Monuments.

The churchwardens cannot remove monuments set up with the consent of the proper parties (3 Inst. 202, and see Chap. V. *in loc.*).

Other matters.

There are many other articles for which no express provision is made, such as erecting galleries, adding new bells, organs, clocks, pulpit cloths, vestry furniture, etc., which must be referred to the general

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power of the churchwardens, with the consent of the parishioners.

When consent of Parishioners necessary.

The consent of the parishioners is not requisite as to things *necessary*, as already specified, nor is it required as to things unnecessary (an organ, to wit), unless to charge the parish with any expense for their support after they have been put up; and even in this case a majority binds the whole. Where no charge is incurred, their approbation is not necessary, and their disapprobation is immaterial, as they are not bound to supply, or pay, an organist (14 Law Jo. 34, Q. B; 1 Hagg. C. R. 198; see 1 Burn, Eccl. Law, 374 a, etc.).

Organs.

In cathedral churches organs may be deemed necessary, but they cannot be put up in parish churches without a faculty; which is not granted without an intimation to the parishioners, that any one may object who thinks fit, and generally contains a clause that the expenses shall be paid by voluntary contributions. A faculty for accepting and erecting an organ offered to a rich parish was decreed by Lord Stowell, but without charging future expenses (1 Hagg. C. R. 198, 1 Hagg. Ecc. 10).

Property in Church Goods.

The goods of the church do not belong to the incumbent, but to the parishioners; and if they are taken away or injured, the churchwardens may bring actions at common law, or suits in the Ecclesiastical Courts, for which purpose they are a corporation (1 Sid. 281).

Alienation of Goods.

In some cases the goods of the church may be alienated, but the churchwardens alone cannot dispose of them without the consent of the parishioners (1 Burn, Eccl. Law, 377).

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As to Bells.

Parishioners are bound to provide and keep in order a *bell with its ropes for church use.* They cannot be *compelled* to provide more than one; and should their church happen to have a peal of bells, although they cannot alienate any without formal permission from the ordinary upon good cause shown, and are bound to prevent their being destroyed or injured, yet the law does not oblige them otherwise to incur, against their own wish expressed in vestry, greater expense in respect of their bells than is requisite for necessary church uses (3 Hagg. Ecc. 16).

"Bells" and "bellringers" in the plural, however, are mentioned in Canons 88 & 111 (Lyndwood 252, quoted in Burn, Eccl. Law, 370, 374).

When to be tolled.

At ordinary morning and evening prayers on any day, and also on Wednesdays and Fridays, when the Litany is read, a bell is to be tolled thereunto a convenient time before the minister begins, that the people may come to hear God's Word and to pray with him. And when any one is passing out of this life, a bell is to be tolled: and after the party's death (if it so fall out) there is to be rung one short peal, and one other before the burial, and one other after the burial. The word *peal* here means merely a continued ringing of one or more bells (Preface to Prayer Book. Canons 15 & 67).

The churchwardens must not allow the bells to be rung superstitiously upon holidays or eves abrogated by the Book of Common Prayer, nor at any other time without good cause to be allowed by the minister of the place and by themselves. The belfry is part of the church, and profaning the belfry would be punishable

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in the same way as profaning any other part of the house of God (Can. 88).

As to the Belfry.

As the freehold of the church (including the belfry and churchyard) belongs to the incumbent alone, subject to its lawful use by the parishioners, the custody of all the keys of the belfry remains exclusively with himself, or with those to whom he from time to time entrusts them (3 Hagg. Ecc. 173). But he must allow the churchwardens access at all reasonable times for purposes connected with the due execution of their office.

The Ringers.

The appointment, change, or dismissal of ringers rests with the *clergyman;* the parishioners (through the churchwardens) have a sufficient check and voice in the matter, as they are not *bound* to provide for any ringing beyond that enjoined by law as before stated. This it is the sexton's duty to perform, and no one has power to prevent *such* ringing. Beyond this the use of the bell is, by law, entirely under the control of the clergyman. The churchwardens may *concur* in ordering the bells to be rung on other public or private occasions; but their power is subject to the incumbent's right to prevent ringing at undue hours, or without just cause, or in defiance of his authority (Burn, Eccl. Law, vol. i. p. 135). On the other hand, the *incumbent's* power to order bell-ringing is subject to Canon 88, which gives the churchwardens a voice as to what shall be accounted a good cause for ringing. Ringing, at the option of the ringers themselves, against the incumbent's known wish, is illegal (Daunt *v.* Crocker, 37 L. J. N. S. 1 Ecc.).

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CHAPTER VIII.

Churchyards.

All churchyards must be consecrated. To be consecrated.

Ancient churchyards are presumed to have been consecrated.

The freehold of the churchyard is in the rector or vicar, but only for public purposes, and he may lease the herbage. The herbage may however be the property of a lay impropriator, if not included in the endowment (37 L. J. N. S. Q. B. 137). Freehold of.

The freehold in the case of new benfices under the *Church Building and New Parishes Acts*, vests in the incumbent (8 & 9 Vict. c. 70, § 13; 19 & 20 Vict. c. 104, § 10). As to patronage districts, see 1 & 2 Will. IV. c. 38, § 17. New Benefices.

The parishioners are bound to repair the fence of the churchyard at their own charge (Lynd 253), since they have a right to the use of the churchyard for the burial of their dead, and also to repair the churchways (Prid. Chwdns. 69).

By prescription, however, the parson may be liable; and if the owners of lands adjoining the churchyard have been accustomed, time out of mind, to repair so much of the fence as adjoins to their ground, it is a good custom, and the churchwardens may have an

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action at common law against them for the same (Gibs. 194).

Repair of.

By the canon law, the churchwardens shall take care that the churchyards be well and sufficiently repaired, fenced, and maintained with walls, rails, or pales (Can. 85).

Trees, etc.

If the trees in the churchyard be cut down, or the grass taken away, the incumbent, in whom is the right of property, may bring an action against the trespassers; but the churchwardens or the parishioners cannot interfere therewith: and they should be felled only to repair the church (25 Edward I. §§ 1, 2; 2 Atkyns' Rep. 217; and see Chap. III. Div. *b*).

Tombstones in

As to erection of tombstones and the consents necessary, see Chap. V.; and as to repair, see p. 60.

The clergyman of the parish is the proper person to proceed in order to prevent the erection of improper monuments (1 Curt. 880), as if an inscription be contrary to the Articles, or obscene, etc.

Fees for.

Fees may be taken by *custom*, which also decides who are entitled to the fees, and in what proportions. (See 1 Hagg. Rep. 14; 1 Burn, E.L. 273.)

Additional Burial Ground by compulsion.

Under the 59th Geo. III. c. 134, § 36, the Church Building Commissioners *could*, and now (under the 19th & 20th Vict. c. 55) the Ecclesiastical Commissioners *can*, compel the churchwardens of *any* parish, or extra-parochial place, to call a vestry to take all necessary steps to enlarge existing, or to acquire additional, churchyards or burial-grounds. (See also 58 Geo. III. c. 45, § 33; 3 Geo. IV. c. 72, § 27.)

New or additional Church-

The Ecclesiastical Commissioners may accept or take grants of any lands for churchyards from *any*

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persons, including disabled or unwilling parties, or corporations, or for additional churchyards (58 Geo. III. c. 45; 59 Geo. III. c. 134; 8 Geo. IV. c. 72; and 19 & 20 Vict. c. 105). The land need not be contiguous to the old churchyard (3 Geo. IV. c. 72, § 3).[1] yards, grants for.

The Commissioners might also, until recently, empower *any* parish, chapelry, township, or extra-parochial place, to purchase ground for a new or additional churchyard, and to borrow the money required on the church-rates (§ 26). These powers have, however, been now rendered inoperative by the Compulsory Church Rate Abolition Act, 31 & 32 Vict. c. 109. (See Appendix B.) Grounds which have been thus acquired may be transferred to the burial-board of the parish or borough, and the latter pays off the subsisting debt, if any (20 & 21 Vict. c. 81, § 7).

If such new or additional burial-ground be out of the limits of the parish, new parish, distinct parish, district parish, or district, or consolidated chapelry, for which it shall have been obtained, the Commissioners may declare that, after consecration, it shall be deemed to be part of such parish, new parish, etc., and the officiating minister of *each* such new parish, etc., may use it, and the chapel therein, and take his accustomed fees (9 & 10 Vict. c. 68, §§ 1 & 5; 8 & 9 Vict. c. 70, § 14). By the Churchyards Act, 1867 (30 & 31 Vict. c. 133, § 4), which relates to additional land

[1] The advantages of this mode are, that the ground belongs exclusively to the parish or district, the whole of the ground is consecrated, and the expensive machinery of a burial-board and officers is avoided, as also are the frauds perpetrated upon incumbents in respect of fees in burial-board cemeteries.

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Under the 30 & 31 Vict. c. 133.

to be added to existing churchyards, the powers given in the School Sites Acts (see Chap. XVII.) are made to apply to conveyances under that Act. A form of conveyance is given in the Act (§ 5). An exclusive right of burial in a portion of the land to be added to any churchyard may be reserved to the donors under the Act, but such portion is not to exceed one-sixth of the land given (§§ 9, 11, as amended by the 31 & 32 Vict. c. 47).

It will be seen that new or additional churchyards, or burial-grounds, may be procured in original or new parishes, or in ecclesiastical districts:

1. Through the Ecclesiastical Commissioners.
2. Under the Burial Acts (see Chap. XI. § 4, div. 2).
3. As to additional grounds under the Churchyards Act, 1867.

Church-ways.

The churchwardens are to see the churchways well kept and repaired, as well as the gates, stiles, and doors (Prid. 72; 1 Curt. 259). They cannot alter the paths without the incumbent's consent (1 Curt. 260).

Fences and ways.

By the 59th Geo. III. c. 134, § 39, the Church Building Commissioners may alter, repair, pull down, and rebuild the walls and fences of, and may also stop up or alter any entrance to, or way over, churchyards, as they may think necessary, with the consent of two justices, and after notice, and according to the Highway Act (55 Geo. III. c. 68; 8 A. & E. 405; and 12 Q. B. 960).

Loitering in the Churchyard.

The churchwardens should not suffer any idle persons to remain either in the churchyard or churchporch during divine service (Can. 19). As to brawling, see Chap. XIX. div. 8.

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Encroachments.

The churchwardens may take notice in the Ecclesiastical Courts of encroachments upon the churchyard, but the bounds of it must be settled in the temporal courts (2 Stra. 1013; Lord Raym. 212).

Fees.

By custom, fees may be required by the *incumbent* upon the erection of monuments, etc. (1 Burn, E. L. 273, and see "Burials"); and by the 59th Geo. III. c. 134, § 11, the Commissioners may, with consent of the bishop and the vestry, fix a table of fees for *any* parish.

Robbery from.

It is a misdemeanour to steal or take a dead body even from an unconsecrated burial-ground (26 Law J. M. C. 47; 20 & 21 Vict. c. 18, § 25).

There must be some property in the thing taken, and an owner, although he be unknown. It is theft to steal a shroud out of a grave, which is the property of those who buried the deceased: and it is desecration even on the part of a churchwarden to convey bones from the churchyard (Adlam *v.* Colthurst, 36 L. J. N. S. Ecc. p. 14).

Closure of.

As to the closure of existing and the providing of new burial-grounds, see Chap. XI. § 4, div. 2.

Repair, etc., of closed ground.

Where the churchyard has been closed, it is held by the Poor-law Board that where no church-rate is in fact levied in any parish, the poor-rate of such parish is chargeable with the expenses of maintaining and repairing the churchyard, referred to in the 18th & 19th Vict. c. 128, § 18, although the church-rate, if levied, would be the fund legally chargeable with those expenses. According to the precise language of this section, the expenses which the churchwardens are entitled to be repaid out of the poor-rate are limited

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to those which are incurred in maintaining the churchyard in decent order, and in doing the necessary repair of the walls and other fences thereof; but not money they may expend in ornamenting the old churchyard. If the walls are out of repair, the expense of rebuilding, etc., may be properly charged on the poor-rate.

By the 11th and 12th Vict. c. 63, § 82, upon a representation to the bishop by a local Board of Health, and the report of the superintending Inspector, that any burial-ground is dangerous to health, and that sufficient means exist for interment within a convenient distance, burials are to cease in such ground.

By the 24th & 25th Vict. c. 61, § 21, Local Boards of Health constituted Burial Boards may repair and maintain the fences of closed burial-grounds within their jurisdiction, and prevent the desecration of such grounds, and place them in a proper sanitary condition; the expense to be defrayed by the rates made by them.

See also Burials, Chap. XI., section 4.

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CHAPTER IX.

VESTRIES.

A VESTRY is so called from the room in which it is generally held. It is the assembly of the whole parish for the despatch of business (Shaw's P. L. c. 17). Vestries are regulated by the 58th Geo. III. c. 69, as amended by the 59th Geo. III. c. 85; and the 16th & 17th Vict. c. 65, which statutes, however, do not apply to the cities of London or Southwark, or vestries governed by a special Act or ancient and special usage (§ 8). By the 13th & 14th Vict. c. 57, power is given to the Poor-law Commissioners, in accordance with a resolution of the vestry, to provide rooms distinct from the church, in order to avoid scandal occurring when vestries are held in the church. And by the 24th & 25th Vict. c. 125, the overseers, with consent of the vestry of any parish with a population exceeding 4,000, may, with consent of the Poor-law Board, hire, purchase, or build an office, for the business of the parish, out of the poor-rates. What.

Meetings of vestry are convened by written or printed notice, stating the time, place, and special purpose, signed by the incumbent, or a churchwarden or overseer, and affixed on or near to the principal doors of How convened.

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every church or chapel[1] in the parish or district previously to divine service on a Sunday; three days to intervene between the Sunday and the day of meeting (1 Vict. c. 45, §§ 1—3).

By whom.

The meetings are to be summoned by the churchwardens, with the consent of the minister. If they refuse, a mandamus must be obtained from the Court of Queen's Bench (Prideaux, 301,310) though perhaps the churchwardens might do so alone, if the minister improperly refuse. A private parishioner can *not*, in any case, call a vestry.[2] Vestries may now be convoked under the Compulsory Church Rate Abolition Act, § 6 (see Appendix B.), *for the purpose of making a church-rate* in any *new* ecclesiastical district legally constituted, having a consecrated church.

Under 31 & 32 Vict. c. 109.

Select Vestries.

By custom there may be select vestries, consisting of a certain number elected yearly, to manage the parish (Gibs. 219). In some other parishes select vestries may be appointed under Sir John Hobhouse's Act,[3] 1 & 2 Will. IV. c. 60, and 59 Geo. III. c. 12, which see. In all matters within its power the select vestry supersedes the common-law vestry. Select vestries are established by a majority of ratepayers, at a meeting especially convened by the churchwardens, on a requisition of one-fifth of the ratepayers, or fifty parish-

[1] This does not apply to private chapels, nor, it is conceived, to proprietary chapels (Steer, 284).

[2] The proceedings in vestry generally, and in relation to church-rates, being the same, *mutatis mutandis*, the reader is referred to the next chapter for further information on this head.

[3] Which applies to "any parish in England or Wales" having more than 800 rated householders, and forming part of a city or town.

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ioners, by notice of not less than ten nor more than twenty-one days, affixed as before. Three successive days are fixed for voting, between 8 A.M. and 4 P.M. If a select vestry be adopted, notice is published in the "Gazette," county newspapers, and on the church doors, and then a meeting is called by notice to elect the vestry (see §§ 18—21). The vestry are elected annually, and consist of from 12 to 120 householders.

Powers of Vestries.

These are to control and regulate the expenditure of the parish funds, to decide as to altering or enlarging the parochial churches or chapels, and as to adding to or disposing of the "goods and ornaments." The vestry also elect some of the parochial officers, either wholly or in part; and has, either directly or indirectly, a superintending authority in all the weightier matters of the parish (Steer, p. 289). These powers are strictly construed by the Courts (Prid. Chwdns. 120).

In Metropolis.

In metropolitan parishes, vestries are appointed under the Local Management Acts (18 & 19 Vict. c. 120),[1] and all existing vestries are superseded (§ 8) in the places within the limits governed by the Act, as to which the 1st & 2d Will. IV. c. 60, is repealed, and all other Acts so far as they are inconsistent with the Management Acts. For the provisions of these Acts the reader is referred to the Acts themselves: they are very voluminous; but as the area which they govern,

[1] See also the amending Acts, 19 & 20 Vict. c. 112, and 21 & 22 Vict. c. 104. (See the edition of these Acts by Woolwrych, Shaw, and Sons, Fetter-lane, London.)

In the Ecclesiastical Commissioners *v.* the Clerkenwell Vestry (3 De Gex Fisher and Jones, 688), it was held, in appeal, that a *church* is within the powers of these Acts, and must not project beyond the regular line of fronts, without the consent of the local vestry board.

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although important, is limited, it would be out of place to dwell upon them here.

As to arrears of rates, see 16 & 17 Vict. c. 65, and next chapter.

As to further proceedings in vestries, see next chapter.

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CHAPTER X.

RATES.

Section 1.—*Church Rates.*[1]

Objects of the rate.

AT common law the parishioners of every ancient parish are bound to repair and sustain the fabric of the church and all public chapels within the parish, and also the ornaments thereof, and to provide things necessary for the proper celebration of divine service, and the administration of the sacraments. The church-rate is a rate levied, according to immemorial custom, for those purposes on persons in respect of their occupation of lands or houses situate in the parish.

Recent Act as to church-rates. (See Appendix B)

This common-law liability has not been in terms removed, although all power of enforcing it, through the medium of a church-rate, has been taken away by the Compulsory Church Rate Abolition Act, 1868 (31 & 32 Vict. c. 109; see Appendix B.); which provides (§ 1) that "no suit shall be instituted or proceedings taken in any Ecclesiastical or other Court, or before any Justice or Magistrate, to compel the payment of any Church Rate."

Former status of Ecclesiastial Districts.

Prior to this Act, the Statute Law provided that the parishioners of every "distinct and separate parish"

[1] This section is taken from a paper on the same subject prepared by the Author for the Church Institution, No. 25, Parliament-street; an Institution which *every* Churchman should support.

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and "district parish" formed under the Church Building Acts, and of every "new parish" formed originally under the New Parishes Acts (58 Geo. III. c. 45, §§ 16, 21, & 70), and of every division of a parish formed under the Church Building Acts which had or might become a "new parish" (19 & 20 Vict. c. 104, §§ 14 & 15; Gough *v.* Jones, 11 Weekly Reporter, 107; Privy Council, 5 N.R. 381), were to repair their churches, and to provide for divine worship therein by means of a church-rate, as in ancient parishes. "District parishes" nevertheless remained (58 Geo. III. c. 45, §§ 21, 71) for twenty years from the consecration of their churches *also* liable to the rate for the repairs, etc., of the mother-church, the other divisions above specified being exempt from that double liability.

Change therein.

Now, however, in the case of *every ecclesiastical district* having within its limits a consecrated church in use for the purposes of divine worship, and which shall have been legally constituted out of any parish or parishes[1] (whether such district shall or shall not be a *separate and distinct parish*), the inhabitants of such district shall not be rated for or take any part in the making or expenditure of any church-rate for the mother-parish or parishes; but they may meet in vestry, and make a rate in relation to the church of their own district in like manner as if such church were the church of an ancient parish[2] (§ 6 of the recent Act).

[1] The word parish in this Act is defined to mean "any parish, ecclestiastical district, chapelry, or place within the limits of which any person has the exclusive cure of souls" (§ 10).

[2] The separation, it may be observed, is only for church-rate purposes. The provisions in the Act as to rights of burial seem to

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By this means one of the greatest obstacles which formerly existed in many places, even to the *making* of a church-rate, has been removed.

Church-rate not now enforceable

It should be noted that the only other fundamental change made by the recent Act is that the *payment* of church-rates (with certain specified exceptions) is no longer *enforceable*. Practically, however, in the majority of parishes this has already been the state of things; payment has never been enforced, and the church-rate has been got in nevertheless.

but should not be abandoned.

It is most desirable, therefore, that the clergy and churchwardens should still make every attempt to obtain a voluntary rate under the new Act, which in fact affords them increased facilities for doing so.

Cases excepted by the recent Act.

The most important of the cases specially excepted by the recent Act is, where money is due on the security of the church-rates under any Act of Parliament. By § 8, rates so made may still be levied and enforced as heretofore.[1] Churchwardens should notice the provision of this section, requiring that their accounts of the receipt and expenditure of the monies so levied should be audited by the auditor of the poor-law union within whose district the parish is situated, "unless another mode of audit is provided by Act of Parliament."

have been inserted to guard against the supposition, that, as the parishioners of the district would be no longer paying towards the repair of the churchyard of the mother-parish, they would lose their right to be buried there. The section does not of course extend to chapels without districts built under the 58 Geo. III. c. 45, § 21, or to chapels with reputed districts only.

[1] These rates therefore, in the case of districts coming under the operation of § 6 of the recent Act, will still have to be made by the churchwardens of the mother-church and the united vestry of the entire parish, and be assessed over the entire parish as heretofore.

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The other excepted cases are (1), by § 2, rates called church-rates, but applicable to other than ecclesiastical purposes, defined by the Act to mean "the building, rebuilding, enlargement, and repair of any church or chapel, and any purpose to which by common or ecclesiastical law a church-rate is applicable," and (2), by § 5, enactments in local Acts, under the authority of which church-rates are levied in lieu of tithes, or other payments previously appropriated to ecclesiastical purposes, or in consideration of the abolition of tithes in any place, or upon any contract made, or for good or valuable consideration given.

Trustees, etc., may pay Rate.

Under the new Act (§ 7), corporations and trustees may pay, if they think fit, any church-rate made in respect of the property which they hold in trust. This power, it is apprehended, could not be legally made available, in the face of distinct notice that the rate was invalid.

Persons refusing to pay Rates.

No person (§ 8) who makes default in paying the amount of a church-rate for which he is rated shall be entitled to inquire into, or object to, or vote in respect of monies arising from such church-rate: so that, in passing the churchwardens' accounts for the past year, only those who have paid can have either vote or voice. At the same time, it is difficult to see the precise advantage of this portion of the section, as it is conceived that, when a church-rate has been once made, and the estimates passed, no further power of voting in respect of the expenditure of the rate ever existed. The section goes on to say that, if the occupier of any premises make default, for one month after demand, in payment of any church-rate, the owner may pay

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the same, and thereupon "*be entitled, until the next succeeding church-rate is made*, to stand for all purposes relating to church-rates (including the attending at vestries and voting thereat) in the place in which such occupier would have stood." The words "until the next succeeding church-rate is made" would probably be construed, in conformity with the preceding part of the section, as equivalent to "until the *making* of the next succeeding church-rate," so that the occupier, and not the owner, would be entitled to vote on that occasion. Churchwardens, however, are earnestly advised to cause application for the church-rate to be made to the owners wherever the occupiers fail to pay.

Rate must still be valid.

It should be borne in mind, that, in order to make a valid church-rate under the new law, it is still necessary to observe the requisites to a valid rate under the previous law. The validity of the rate is important, both in order to obtain the benefit of the enabling provisions of §§ 7 and 8 of the Act, and more especially to deprive disaffected persons of any excuse for non-payment other than that of sheer unwillingness to pay.

Notice to levy Rate.

The notice convening a meeting of the vestry for the purpose of laying a church-rate must be signed by the incumbent, or by a churchwarden, or by an overseer, or by all of these (1 Vict. c. 45, § 3).

Form of.

Notice is hereby given, that a vestry of the inhabitants and occupiers assessed to the relief of the poor of the parish of —— [other than those residing within the "new parish, district parish, chapelry, *or* district," (as the case may be), of ——; *or, if the rate be for the church of one of these, then say*, a vestry of the parishioners of the "new parish" *or* "district parish"

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of ——; *or*, a vestry of the inhabitants of the chapelry or district of——] will be held at (*the vestry room*) on —— day, the —— day of ——, 18—, at —— o'clock in the fore (*or* after) noon, for the purpose (*here state object*, i.e. *whether* "of laying a church-rate for the ensuing year" *(which would include the strictly necessary items only)*, or "for making a rate for the repair of the church, and the necessaries for the due celebration of divine service" *(which would include the allowable items)*, *or for what other purposes the rate is proposed to be made;* in any case adding, "and for such other expenses as are by law chargeable on the church-rate."

The following form is given by Mr. Prideaux (Prid. Churchwardens, 11th ed. p. 87):—

(*Name of Parish.*)—The parishioners are requested to take notice that a vestry meeting will be held on ——day next, —— day of ——, at —— o'clock in the fore (*or* after) noon, at (*the usual place of meeting within the parish*), for the purpose of passing the accounts of the late churchwardens, and of making a rate or assessment for the repairs of the parish church for the present year, and for such other expenses as are by law chargeable on the church-rate.

Dated, &c. Signed, &c.

The notice must specify the *place*, *day*, *hour*, and *purpose* of the meeting;[1] it must be affixed to or near to the principal door of the parish church, and of every consecrated church and chapel within the parish over

[1] It must not include items or charges to which the parish may be liable in addition to its common-law liability under the Church Building Acts or by local Acts. For these, separate rates must be granted (Reg. *v.* Abney, 23 L. T. M. C. 154).

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which the rate is to be levied (except proprietary or private chapels), before the commencement of divine service on Sunday, three clear days at least before the meeting,[1] exclusive of the day of giving notice and of the day of meeting.

Chairman.

The incumbent of the parish is, *ex officio*, chairman: "in sound legal principle he is the head and præses of the meeting" (Wilson *v.* McMath, 3 Barn. & Ald. 244, 247; Reg. *v.* Doyly, 12 Adolp. & Ell. 139; Baker *v.* Wood, 1 Curt. 507). Should he not arrive at the hour fixed for the meeting, the parishioners present are forthwith (58 Geo. III. c. 69, § 2) to appoint a chairman, who remains so, though the incumbent may subsequently arrive, unless expressly elected "until the incumbent arrive." Of course no poll can be had as to choice of chairman. The curate can only act and vote as an ordinary parishioner.

The Rate cannot be retrospective.

No church-rate should be laid for retrospective purposes; *i.e.*, for any charges and expenses beyond those incurred in the current year,[2] on the principle that those who created the charge must bear it themselves. It has been ruled that a former churchwarden cannot be reimbursed money expended by him, nor for repairs

[1] Thus Thursday would be the earliest subsequent day for the meeting.

[2] "Whether incurred before or after the making of the rate." (See Farlar *v.* Chesterton, 2 Moo. P. C. C. 330, and Butt *v.* Fellowes, 3 Curteis, 680; Rogers's Ecclesiastical Law, p. 1232, and other cases there.) It is considered that a few *trivial* retrospective or other illegal items will not vitiate a rate; but see Piggott *v.* Bearblock, 8 Jur. 479, where it is said, "An illegal payment, however small, will vitiate the rate," which words, however, do not occur in the other reports of the same case, in 4 Moo. P. C. 399, and 3 Notes of Ecclesiastical Cases, 85.

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already done, though in pursuance in each case of an order of vestry (Lanchester *v.* Thompson, 5 Madd. 4; same *v.* Tricker, 1 Bing. 201). The rate however may be lawfully applied to any unforeseen (legal) debt not included therein (Reg. *v.* Read, 18 L. J. M. C. 164).

Estimates.

As a church-rate can be levied only for the amount actually required, great care is necessary in framing the estimates. They should be prepared in two divisions —the "necessary expenses," and the "allowable" expenses, as it is quite competent for the vestry to discuss, to divide, and even to poll upon, each separate item. In the event of the estimates being incomplete, or not sufficiently in detail, any parishioner can move a short adjournment for their amendment. The necessary items are those for which the law *requires* the vestry to make provision, viz. :—

Necessary items.

Church: Repair, sweeping and cleansing; one bell at least; churchyard; keeping in good order and condition.

Bread and wine for the Holy Sacraments.

Incumbent: Surplice, and washing same; light to read by on Sunday evening.

Visitations and visitation fees, if payable by custom (Shepherd *v.* Payne, 12 C. B. N. S. 414).

Repayment of loans for rebuilding churches, for enlarging burial-ground, or for purchase of new burial-grounds: indeed, these last are *obligatory*, under 59 Geo. III. c. 134, § 24, but must *form a separate rate*.

Allowable items.

The allowable expenses are those which, though not required by law, yet the vestry can, if it please, make provision for :—

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Church: Insurance (see Reg. *v.* Green, 6 Jur. 803), beautifying, erection or alteration of galleries and pews,[1] &c., clock, gas or light for the entire church, warming, bell-ringer (Hill *v.* Haskew, 10 Jur. N. S. 777; Kemp *v.* Attenborough, 30 L. T. 211), salary and gowns for sidesmen.

Service: Organ, organist, organ-blower, sexton, beadle, clerk, pew-opener, choristers.

Illegal Items.

The illegal items are churchwardens' dinners, minister's stipend, repair of chancel, fire engine, costs of a pending suit (Reg. *v.* Read, *supra*), retrospective items, etc.

When serious opposition in vestry is anticipated or if for any other reason great strictness appears desirable, it is better to omit the "allowable" items.

Proceedings in Vestry.

When the estimates have been submitted to the vestry, the churchwarden should formally move that they be adopted.

It is well to provide in the terms of the motion, that, in the event of the money actually collected falling short of that required, the churchwardens may, in their discretion, reduce or omit particular items; or a general discretion may be given them, but not so as to travel out of the objects specified in the estimate.

If no objection be made, then let it be moved that a rate of —— in the pound be laid.

If any parishioner object to an item, and call for a division, the chairman had better allow a division at once; but if a poll be demanded then postpone the matter until the rate be actually proposed at the amount fixed by the churchwarden. When the rate

[1] For extensive alterations a faculty is necessary.

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has been moved and seconded, any parishioner may address the meeting.

"Convenience prescribes that before the poll is taken all the propositions should be before the vestry." "If when the poll is taken another amount of rate might be proposed, the proceedings might go on *ad infinitum*" (Cockburn, C. J., in Reg. *v.* Justices of Surrey, *supra;* and see *Ex parte* Joyce or Mawley, 23, L. J. N. S, M. C. 153).

No business but that specified in the notice can be transacted, and no motion or amendment inconsistent with the object of the meeting as stated in the notice can be made.

Evasive motions

Thus, it is not allowable to move an evasive adjournment; or an abstract resolution, as, "that there be no church-rate;" but a parishioner may move that a less rate be granted, in which case a poll may be at once asked for by a parishioner present; and the poll (if any) upon any other matter should be taken at the same time. If more amendments than one be moved then the chairman should put them successively:

Thus: A 4*d.* rate proposed—Amendments, 3*d.* and 2*d.* The chairman will first put the original question, and then the amendments successively. This is recommended as the easiest method of avoiding difficulties. The practice of the House of Commons is similar to that here recommended. The more usual course of putting the amendments first leads to great inconvenience. The poll can be taken subsequently on all.

The chairman should see the minutes, and all motions, amendments, and corrections, duly entered;

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and then, and not till then, sign the minutes. He should take care that the sense of the meeting be taken upon any proper motion relative to the specified business; that such business be brought forward in proper form; and that all may speak who desire to do so, although he cannot compel the meeting to hear them.

The chairman may decide which of several persons claiming to be heard has a right to speak first—may himself speak to any question or move any resolution, and may do all that a member may do.

Adjournment

As a general rule, the chairman cannot interrupt, adjourn, or postpone the business; but this should be done by the majority of votes on questions put (Rogers, Eccl. Law, p. 874).

But where an adjournment is necessary (as where a poll is demanded) the chairman may adjourn of his own authority, and may appoint the time and place for a poll: and this, notwithstanding that the church-wardens and overseers have given notice, that, if a poll is demanded, it will be held at a different time and place.

If a poll be asked, it *must* be granted, or the rate will be invalidated. The chairman will then, before he adjourn the meeting, fix the place and the times of its commencement and close.

It is advisable at once to name the times and place, and to further agree, that if no vote on either side be tendered for an hour, the poll shall then close.

The place and duration of the poll must be such as to allow all voters to come in, and it should be made reasonably notorious. The rate books should be produced, and their production can be enforced.

There can be no voting by ballot in the absence of

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a local Act or valid custom to that effect, it being clearly inconsistent with the principle of one man having more votes than another.

Scrutiny. The result of the poll must be announced in open vestry, and any member may demand a scrutiny. It is generally better, as regards disputed votes, to adjourn the poll for a scrutiny than to discuss the votes when tendered; but the chairman may decide as to the validity of the votes tendered, and may call in an assessor to assist him in doing so. It has been held that a scrutiny cannot be demanded as a matter of right. See R. *v.* Vicar of Hammersmith, 19 L. T. 203; and Prid. Churchwardens, p. 113 n *(v)*.

If it is desired to do new business at the adjourned vestry, fresh notice must have been given; for, as regards new business, it is a new meeting.

Voting. The rate can only be laid by the majority (however small) of those present at the vestry, the chairman having a casting vote, in addition to his own vote or votes (58 Geo. III. c. 69, § 2); or, in the event of a poll being demanded, by a majority of the votes of the parishioners.

Each person has one vote only on a show of hands.

The persons qualified to vote in the making of a church-rate are the occupiers, whether resident or not (including unmarried women and widows, 1 & 2 Will. IV. c. 60, § 7), rated to the relief of the poor, and who have duly paid that rate (if made and signed by the overseers three months or more previously to the vestry meeting) (16 & 17 Vict. c. 65; 58 Geo. III. c. 69, §§ 1, 2, 3, 4; 59 Geo. III. c. 85, § 1). Upon a poll the votes are according to the following scale:—

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A ratepayer assessed (for one or more properties) under 50*l.* has 1 vote.
,, at or above 50*l.* & under 75*l.* ,, 2 votes.
,, ,, 75*l.* ,, 100*l.* ,, 3 ,,
,, ,, 100*l.* ,, 125*l.* ,, 4 ,,
,, ,, 125*l.* ,, 150*l.* ,, 5 ,,
,, at or above 150*l.* ,, 6 ,,

Six votes are the maximum in all cases, except where an owner having paid the rate of an occupier is entitled to the votes of the occupier in addition to his own, under sec. 8 of the Compulsory Church Rate Abolition Act, if such an occasion arise.

The voters must attend in person, no proxies being allowed, except under a local Act.

Corporations and companies vote by their secretaries, clerks, &c., by a special order under their corporate seal. It has been decided that the Small Tenements Rating Act (13 & 14 Vict. c. 99) does not apply to church-rates (Attenborough *v.* Kemp (Privy Council), 5 L.T. N.S. 68; Hill *v.* Bailey, 4 N.R. 160); the small occupiers must therefore be assessed to the church-rate upon the same scale as other occupiers; but as the *owners* are assessed to the *Poor* Rate *they* (and not the small occupiers) are entitled to vote, combining these tenements with their other qualifications, so as to vote according to the aggregate rateable value (Prid. Churchwardens, pp. 97, 114, 155).

The rate must show upon its face for what purposes, and by what authority, it was made, or it will be void. The heading must not be such as might be held to include matters foreign to church-rate. See Prid. 172, where the following form of church-rate is given:—

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Form of Rate.

We, the Churchwardens and other Parishioners of——, in the county of——, and diocese of——, whose names are hereunto subscribed, do hereby, this day of——, in the year 18—, at our vestry meeting for that purpose assembled, rate and tax all and every the inhabitants and parishioners of the parish aforesaid, hereunder mentioned, for and towards the repairs of the church of the said parish for the present year, the several sums following (that is to say):—

	£	s.	d.
A. B. - - - - - - -	1	2	0
C. D. - - - - - - -	0	3	0
E. F. - - - - - - -	3	9	0

and so on—

A. B.
C. D. } Churchwardens.

E. F.
G. H.
I. K. } Parishioners.

Confirmation of Rate.

When the rate is granted, the churchwardens may apply to the ordinary for a faculty to confirm the rate; but its confirmation is not necessary, and its absence does not invalidate proceedings in the Ecclesiastical Courts.

Assessment of the Rate.

The rate is to be calculated upon a proper assessment of the annual value of property liable to church-rate; *i.e.*, upon all occupiers within the parish in respect of the lands and houses which they occupy, and this whether they do so for their own benefit or as bare trustees (Prid. 165; Jones *v.* Mersey Docks and Harbour Board; Mersey Docks and Harbour Board *v.* Cameron,

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35 L. J. M. C. 1). In some parishes, where the custom has prevailed from time immemorial, stock-in-trade and shipping are also liable. As a general rule (and it is both reasonable and equitable), the assessment for church-rate is founded on that for the poor-rate. But it is not safe to rely upon the latter unless of modern date, and also just and equal, to the parishioners, *inter se*, at the time of the church-rate being made (Attenborough *v.* Kemp, *supra*). The last assessment under the "Union Assessment Committee Act, 1862," will generally be found a safe basis for the church-rate. But this assessment must not be adopted if wrong in principle, as, for instance, if rent[1] *simpliciter* has been taken as the "annual value" (Attenborough *v.* Kemp, *supra*), as it frequently happens in the assessment for poor-rate, that *one* person is rated in respect of property held by *several* occupiers, the only safe course is to assess, *by name*, every occupier of property within the parish, in respect of his actual occupancy.

Exemptions.

The exemptions from the rate are—

Crown lands in the occupation of the sovereign.

Lands of the glebe, or endowment of the Church, *i.e.*, *in* the parish, but not otherwise (Prid. Chwdns. 158), (the rector being liable to repair the chancel).

Tithes, and prebendal land liable to repair the chancel (Tamworth case; Hill *v.* Askew, 11 Law Times, N.S. 253). Churches and chapels, and meeting houses duly certified for divine worship, even though also used as schools (3 & 4 Will. IV. c. 30).

Scientific and literary institutions certified under 6 & 7 Vict. c. 36. (But the trustees of Hospitals

[1] Rent is *a*, not *the*, criterion of annual value.

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or Lunatic Asylums are liable to be rated. See Mersey Dock case, *supra*.)

Incorporeal hereditaments, as rights of way and commons, and the right to game, when separated from the occupation of the land.

Market standings, if held by inhabitants of other parishes; pews, right of way or common.

Land liable from time immemorial to the repair of a chapel coeval with the parish church (Craven *v.* Saunderson, 7 Ad. & E. 80).

Persons who are too poor to pay may be excused (Prid. Chwdns. 259, 260), but they should be first assessed.

Synopsis.

Thus it would appear that a rate, to be strictly legal, must be based on a fair assessment of the parishioners, *inter se* (*i.e.* on the face of it);[1]

Must be necessary, and not excessive;

Must not be retrospective;

Must contain no illegal items;

And must be voted by a majority, at a vestry legally convened, and on a poll, if demanded.

Annual return of Rates.

It may be here noted that by the 23 & 24 Vict. c. 51, § 3, the churchwardens are required to make an annual return of the sums levied for church-rates, and of the expenditure thereof, to one of Her Majesty's Principal Secretaries of State, in the month of June in every year.

Power to appoint Church Trustees.

The power given by § 9 of the Compulsory Church Rate Abolition Act, to this effect, is likely to prove

[1] If items only are alleged to be retrospective, the question must be raised on the allowance of the accounts (Reg. *v.* Dursley, 4 Ad. & E. 361; Reg. *v.* Gloucester, 5 Durnford & East, 346).

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very beneficial, particularly in agricultural districts. (See the section in Appendix B.)

Persons wishing the good of the church may now give a sum down in lieu of or in addition to their church-rate, and such money may be held by the trustees appointed under this section, and the income applied for the repair or otherwise in relation to the fabric of the church, the wishes of the donor being carried out wherever possible.

The trustees cannot of course, under the recent Act, receive any money for purposes to which a church-rate would not be applicable, as, for example, for increasing incumbent's stipend (§§ 9 & 10).

The following form of notice has been recommended for use by churchwardens in case of non-payment by occupiers:—

"The Compulsory Church Rate Abolition Act, 1868, 31 & 32 Vict. cap. 109.

"We do hereby give you notice that a church-rate has been made in this parish, in accordance with the provisions of this Act, and that the amount due by you is £ *s.* *d.*; and we now request payment of the same, and beg leave to draw your attention to the eighth section of the above Act, whereby it is enacted that 'If the occupier of any premises shall make default for one month after demand, in payment of any church-rate for which he is rated, the owner shall be entitled to pay the same, and shall thereupon be entitled, until the next succeeding church-rate is made, to stand for all purposes relating to church-rates (including the attendance at vestries and voting thereat), in the place in which such occupier would have stood."

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"It is our duty to act upon the provisions of this clause, and we shall therefore, in one month from this day, make a second application to you for payment of the above amount; and if you do not then pay the same, we shall apply for payment to your landlord, as the owner referred to in the above clause of this Act.

} Churchwardens of
} —— parish.

"Dated this —— day of —— 18—."

Section 2.—*Poor-Rates, &c., as affecting the Clergy.*

The Clergy liable.

The parson and vicar are liable (as other persons are) to be rated for their property in the parish.

Tithes, etc.

The tithes and tithe-rent charge are rateable, at their net value, to the poor; and the following deductions from the gross value are allowed:—

Deductions allowed.

a. The annual amount chargeable on the rateable value for tenant's rates and taxes, such as tenant's poor-rate, general-rate, lighting-rate, and property-tax.

b. An annual average per-centage for the costs of collection, for legal process, and for losses by non-payment.

c. The proportionate charge for the firstfruits, tenths, and ecclesiastical dues and fees, and an average sum for the annual cost of repairing the chancel.

d. The amount payable to the minister of a district, if the parish has been legally divided, and the tithes have been actually or virtually severed, and an amount charged upon the living in behalf of such minister.

e. A reasonable sum for a tenant's profit, if such additional allowance is necessary to induce a tenant to

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take the rent-charge (Reg. *v.* Goodchild, 27 Law Journal, M. C. 233—257).

But not for curate's salary (Reg. *v.* Inhabitants of Sherwood, 16 L. T. N. S. p. 663, overruling previous cases), or for the stipend of the incumbent of a new district, charged according to Act of Parliament, by the rector of the old parish on the tithe rent-charge (31 L.J. M.C. 148; 8 Jur. N.S. 866), or for land-tax, or other landlord's tax, or for the incumbent's own services, or for repayments to Queen Anne's Bounty (Reg. *v.* Trustees of Poor of St. John, Hackney, E. B. & E. 2, 31 Law Times, p. 9; Queen *v.* Goodchild, E. B. & C. 1; but as to sewers-rate in the Metropolis, see 18 & 19 Vict. c. 120, § 161).

Exemptions.

It has been held that the incumbent of a district constituted under the New Parishes Acts, and endowed with a rent-charge of 150*l.* a-year out of the rectorial tithe of the mother-parish is not liable to be assesed to the poor-rate (28 L. J. 300, Q. B.) as not being an "occupier" of the mother-parish.

Scientific Institutions.

No person is liable to be rated to any county, borough, parochial, or other local rate for any premises or parts of premises belonging to any society instituted for purposes of science, literature, or the fine arts exclusively, either as tenant or owner, *and* occupied by it for carrying into effect its purposes, provided that the society is supported wholly or in part by annual voluntary contributions, and does not, and by its laws may not, make any dividend, gift, division, or bonus in money to any member, and that it be certified, as in the Act mentioned (6 & 7 Vict. c. 36, § 1).

Churches.

By the 3d & 4th Vict. c. 30, no person is liable to

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any poor-rate or church-rate in respect of any church, district church, chapel, or meeting house, or such part thereof as is *exclusively* appropriated to public religious worship, and which (other than churches and district churches) shall be certified for public worship. Parts not so appropriated, *and* from which any rent, profit, or advantage is received, are not exempt (§ 1), but their use as Sunday or infant schools does not render them liable (§ 2).

Houses of Residence.

As regards the residences of the clergy, the Poor-law Board hold that they are neither wholly nor partially exempt, by reason that they cannot be let partially or wholly, but that they must be valued for poor-rate as any other house similarly built and situated. (See re Bennett, 11 Law Times, N. S. 24.)

Other property liable.

Any other property is liable, if of a beneficial character (*i.e.*, *capable of yielding* a profit), according to the annual value at which it *would* let from year to year to a tenant, free of all rates and charges, cost of repairs, insurance, and other necessary expenses; in short, the *net* sum which the person so renting would annually guarantee to the owner (6 & 7 Will. IV. c. 96, § 1, and see 25 & 26 Vict. c. 103); but it is not necessary that the occupation should be beneficial to the owner (Mersey Docks, &c. *v.* Cameron, 35 L.J. M. C. p. 1). Charitable institutions are not exempt (same case), nor a National school-house, although no profit is made from it (Laughlin *v.* Overseers of Saffronhill, 12 Law Times, N. S. 542; Reg. *v.* Stapleton, 4 B. & S. 649).

Charities exempt when.

Where there is a beneficial occupation of public and charitable institutions, by their officers having apartments therein for themselves and their families, those

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offices are rateable as if the apartments were their separate dwellings (Prid. Chwdns. 162, and cases there), and so are occupants of an almshouse, as in the case of the Merchant Taylors' Almshouses for widows of poor freemen (*ib.*).

So also county justices have been held liable to poor-rates in respect of a portion of the county-courts let off to the city corporation (Justices of Lancashire *v.* Overseers of Cheetham, 37 L. J. N. S. Q. B. 12).

Other local rates.

By the Public Health and General Local Government Acts, and by the various Local Improvement Acts, it is provided that "the owner of tithe, a tithe commutation rent-charge, and the occupier of land used as arable, meadow, or pasture-ground, only, or as woodlands, market-gardens, or nursery-grounds, shall be rated to rates under those Acts at *one-fourth* only of the net annual value," and where the Towns Improvement Act is incorporated in local Acts, tithes and churches, or chapels, and buildings exclusively used for the purposes of the gratuitous education of the poor or of public charity are exempt from any rate under such local Act. (See § 168 of the "Towns Improvement Clauses Act," 10 & 11 Vict. c. 34.)

Exemptions

No incumbent, &c., of any church or chapel is liable to any expenses of paving, sewering, levelling, channelling, and flagging any private streets under the "Public Health Act," as the owner of such church or chapel, nor are such expenses chargeable on the church or chapel (3 & 4 Will. IV. c. 30, and 6 & 7 Vict. c. 36).

A church is not rateable to the expenses of paving a new street under the powers of the Metropolitan Management Acts (Angell *v.* Vestry of Paddington, 37 L. J.

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N. S. M. C. 171), nor apparently to any other rates levied under those powers; Cockburn, C. J., remarking in the case referred to that it was only necessary to say that a church is neither "a house" nor "land" within the meaning of the Acts.

The manner of assessing poor-rates is now further regulated by the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103).

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CHAPTER XI.

DIVINE SERVICE, AND THE OFFICES OF THE CHURCH.

Section 1.—*Divine Worship.*

A CLERGYMAN may not in any respect alter, add to, or diminish the prescribed form of worship, or the Scriptures (1 Phill. 283). This uniformity in worship was established at the Reformation, and by several statutes, the chief being that of the 13th & 14th Car. II. c. 4, by which it was enacted that the Book of Common Prayer shall be the book which shall be appointed to be used in all cathedrals, churches, and chapels, under penalties of forfeiture and imprisonment.[1] (See also 1 Eliz. c. 2, and 2 & 3 Ed. VI. c. 1, and 5 & 6 Ed. VI. c. 1.) It is thus incorporated into the law of the land. And if any minister "wilfully use any other rite, form, &c., in the Lord's Supper, or other open prayer, or preach and speak in derogation of the Book of Common Prayer," he is subject to forfeiture and imprisonment, increasing with each

Uniformity in.

[1] The strictness with which this uniformity should be adhered to is shown by the following extract from the judgment of the Privy Council in Martin *v.* Mackonochie (38 L. J. N. S. Ecc. 1): "Their "Lordships are of opinion that it is not open to a minister of the "Church, or even to their Lordships in advising Her Majesty, as the "highest ecclesiastical tribunal of appeal, to draw a distinction in acts "which are a departure from or violation of the rubric, between those "which are important and those which appear to be trivial. The ob- "ject of a Statute of Uniformity is, as its preamble expresses, to pro-

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offence (Cripps, 672). The offence is cognizable by justices and by the Ecclesiastical Court (3 Burn, E. L. 257). But the Church Discipline Act now prescribes the proper and most efficient mode of procedure. (See Chap. XVIII., sec. 5, and Appendix.)

Notice at.

The Book of Common Prayer is to be used in the manner and at the times appointed by the rubric;[1] and no proclamation, or public notice of a vestry or other matter, may be made during or after service, unless enjoined by the Queen or Act of Parliament, the ordinary or the rubric (1 Vict. c. 45, and rubric after Nicene Creed).

On Sundays.

The Church service should be regularly performed every Sunday morning and evening, and on days appointed by the Book of Common Prayer to be kept holy, and their eves, according to the form prescribed in the Prayer-book (1 Hagg. Eccl. 25).

Under the 1st & 2nd Vict. c. 106, § 80, the bishop is expressly authorised to order two full services, with sermon, every Sunday, in every benefice, whatever the value; and also in any church or chapel of any parish or chapelry where a benefice comprises two or more

"duce 'an universal agreement in the public worship of Almighty God,' "an object which would be wholly frustrated if each minister, on his "own view of the relative importance of the details of the service, "were to be at liberty to omit, to add to, or to alter any of those de- "tails. The rule upon this subject has been already laid down by the "Judicial Committee in 'Westerton *v.* Liddell,' and their Lordships "are disposed entirely to adhere to it:—'In the performance of the "services, rites, and ceremonies ordered by the Prayer-book, the direc- "tions contained in it must be strictly observed; no omission and no "addition can be permitted.'"

[1] The rubric is law; and, under the Acts of Uniformity, has the force of an Act of Parliament (Kemp *v.* Wilkes. Steph. Laws of Clergy, vol. ii. p. 1079).

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parishes or chapelries, if the annual value is 150*l.*, and the population 400. And by the 58th Geo. III. c. 45, § 65, the bishop may order a third service on the Sunday in any church or chapel when there would not otherwise be sufficient accommodation for the parishioners, and may appoint a curate for that purpose, and provide for the payment of his stipend. Third Service.

It does not appear that the bishop can enforce daily services (Cripps, 677), although he may dispense with double service on Sundays (57 Geo. III. c. 99; 1 Hagg. 25). Daily Service.

It has been held that daily service is not requisite under a trust to perform the service "in strict and literal accordance with the Book of Common Prayer" (re Hartshill Endowment, 34 Beav. 130).

No clergyman is to serve more than two benefices in one day (1 & 2 Vict. c. 106), unless in case of pressing and unforeseen emergency, which he is forthwith to report to the bishop. Proceedings for neglect of duty are rightly instituted under the Church Discipline Act, and not under the 1 & 2 Vict. c. 106, which relates only to duty inadequately performed (Bishop of Winchester *v.* Rugg, 37 L. J. Ecc. 85). Two Benefices only to be served in one day. Neglect of Duty.

The bishop may prevent any clergyman from publicly officiating in his diocese, unless authorised by him. (1 Rob. 382). And the minister and churchwardens should not suffer any one to preach in their churches or chapels unless they are licensed to preach (Can. 50). And it is conceived that the license should be from the bishop of the diocese in which the church is situated (Cripps, 683; Can. 52). Officiating without Authority.

By 2 & 3 Vict. c. 30, in benefices where there are

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Bishop may apportion Duties.

more than one spiritual person entitled to the cure of souls, the bishop may order an apportionment of the duties, if no cause is shown by the churchwardens and inhabitants to the contrary.

American Clergymen.

The bishops and clergy of the American Episcopal Church may officiate for two days, with the written permission of the bishop of the diocese (3 & 4 Vict. c. 33, § 1), but only for the particular days mentioned in the bishop's license.

Scottish Clergymen.

By the 27 & 28 Vict. c. 74 (overruling the 3 & 4 Vict. c. 33, so far as it relates to clergy of the Scotch Church), no person admitted into holy orders by any bishop of the Protestant Episcopal Church in Scotland is to be admitted to any benefice or ecclesiastical preferment in England or Ireland without the consent of the bishop of the diocese in which the preferment is situated, who may refuse his consent without assigning any reason; the Scotch clergyman is required previous to his admission to "make and subscribe before such bishop "every such declaration and subscription as he would by "law have been required to make and subscribe *at his* "*ordination* if he had been ordained by a bishop of the "United Church of England and Ireland" (§ 5). A penalty of 10*l.* is imposed upon Scotch clergymen officiating without notification to the bishop of the diocese (§ 6).

False Doctrines.

The preaching or affirming any doctrine contrary or repugnant to the Articles is punishable by deprivation (13 Eliz. c. 12).

Vestments to be worn.

As to these, see *supra*, Chap. VII.

Manner of performance of Service.

The manner of performing the service, according to the rubric, rests with the minister only, subject to the bishop.

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Section 2.—*Marriages, Christenings, Churchings, and Burials.*

By the 53d Geo. III. c. 146, copies of the register of *baptisms* and *burials*, verified by the minister, and signed by one of the churchwardens, are to be sent, by post, by the churchwardens to the registrar of the diocese, on or before the 1st day of June in every year; and by the 6th & 7th Will. IV. c. 85, § 33, copies of all entries of *marriages* are to be transmitted by the minister four times a year to the superintendent registrar. Registers, and see "Incumbents."

Before stating the law generally as to the performance of the several offices of the Church, we will explain how far it is peculiarly applicable to the performance of them in the different ecclesiastical subdivisions of ancient parishes.

As to "separate and distinct" parishes, and "district" parishes, the 27th section of the 58th Geo. III. c. 45, provides that all acts, laws, and customs relating to banns of marriage, marriages, christenings, churchings, and burials, and the registration thereof, and to ecclesiastical fees, oblations, and offerings, shall apply to these parishes in like manner, in *every respect*, as if they had been ancient parishes. As to burials, see Edgell *v.* Burnaby, 8 Exch. 788. In Church Building Commissioners' Parishes and Districts.

As to all "district" and "consolidated" chapelries, and other similar divisions of parishes, the 59th Geo. III. c. 134, § 17, provides in like manner, and as if they also had been ancient *parishes*. So also as to all extra-parochial places, and all subdivisions or districts

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thereof, for which churches have been built under the Church Building Acts. (See 3d Geo. IV. c. 72, § 18.)

As to "district chapelries," by the 3d Geo. IV. c. 72, § 17, *no publication of banns elsewhere between residents in the district is valid.*

Until any ecclesiastical district formed under the Church Building Acts has a burial-ground provided, persons dying within its limits are to be buried in the parish cemetery, "in all respects as if the division had not taken place" (7 & 8 Geo. IV. c. 72, § 2).

Particular Districts.

As to "particular districts," under the 1st & 2d Will. IV. c. 38, the law is not so strong; the right to solemnize baptisms, churchings, and burials being simply granted (but see sec. 14). Under the 7th & 8th Vict. c. 56, § 1, the Commissioners and the bishop may authorize marriages therein.

Peel Districts.

As to "Peel districts," the 11th section of the 6th & 7th Vict. c. 37, "authorises" the incumbent to perform such services and offices (other than burials and marriages) as shall be specified in his license, and independently of the incumbent of the original parish so far as the license authorises him to do so; and by section 14, *until* a church is consecrated in the district (when it becomes a "parish"), the prior right of the incumbent of the mother-parish to publish banns, solemnize marriages, and perform burials, is to remain intact, as if the district had not been constituted.

Peel Parishes.

As to "Peel parishes." Upon the church being consecrated, the incumbent has "exclusive cure of souls" (§ 15); he may publish banns and solemnize marriages, baptisms, churchings, and burials according

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to the laws and canons, which are to apply to him and his church.

New Parishes.

Under Lord Blandford's Act (§ 15) it is provided, as to all of the above (except the "distinct" and the "district" parishes, where they were complete at the passing of the Act by the avoidance of the mother-church), that on their becoming "new parishes" the incumbents thereof shall have the *exclusive* right of performing all ecclesiastical offices within their limits for their resident inhabitants, who are for all ecclesiastical purposes to be parishioners thereof, and *of no other parish*.

Extra-parochial Place, Ecclesiastical District.

Under the 6th & 7th Will. IV. c. 85, § 26, the bishop may license any church or chapel for solemnization of marriages.[1] The license is revocable, and the patron and incumbent of the mother-parish may appeal to the archbishop against the granting of the license (23d Vict. c. 24). And see the same Act as to the appropriation of the fees before and after the avoidance of the mother-church.

Section 3, Division 1.—*As to Marriages generally.*

Originally, perhaps, marriage was merely a civil contract; nor, previous to the 26th Geo. II. c. 33, was it necessary that it should take place *facie ecclesiæ* (Cripps, 716). But the intervention of a priest was necessary (Steer, 155). Now, however, by the 6th and 7th Will. IV. c. 85, that is not always necessary. The 4th Geo. IV. c. 76, is the general Act relating to mar-

[1] By sect 31, option is *reserved* to parties to marry in the parish church where a church or chapel is licensed only.

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riages, except so far as it is altered by the Act of Will. IV. and the 19th & 20th Vict. c. 119.

All persons not under disability may marry. Disabilities are either canonical or civil.

Canonical Disabilitie

Canonical disabilities render a marriage *voidable* only—if sentence to that effect be obtained in the lifetime of both parties, not otherwise (Steph. Comm. vol. ii. p. 255). They are, (*a*) impotence, or disability at the time of marriage to procreate children (*ib.*). (*b*) Precontract of marriage to another person was a disability. This, however, is now abolished, for no proceedings shall be had in any Ecclesiastical Court to compel marriage by reason of any contract (4 Geo. IV. c. 76, § 27).

Civil Disabilities.

Civil disabilities render a marriage either void *ab initio*, or voidable, and a clergyman having prior notice of them will be punishable if he perform the ceremony, whether the banns be forbidden or not; and if there is fair ground for suspicion, he should make all reasonable inquiry without notice.

Clergyman, when to inquire as to.

Void Marriages.

1. If either party has a husband or wife living (although beyond seas) by a marriage valid either here or by the *lex loci contractus*,[1] unless there has been a divorce *a vinculo*, binding in this country, the marriage is void (2 Hagg. Con. 59; 2 Add. & El. 540).

2. Want of age *was* a fatal defect, without consent of parents or guardians; but now (4 Geo. IV. c. 76,

[1] As to marriages abroad, see 4th Geo. IV. c. 91, and *infra*, div. 2. As to the *lex loci*, see, further, Cripps, p. 717. A marriage, valid by the *lex loci*, is, as regards the *form*, valid everywhere; but the validity, as regards *essentials*, depends upon the *lex domicilii* (Brook *v.* Brook, 4 Law Times, N.S. 93).

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§§ 8 & 17) the want of consent does not render the marriage invalid, nor is the clergyman officiating punishable, if he had no notice of the fact.

If both or either of the parties are under the age of consent, *i.e.*, if the male be under fourteen and the girl under twelve, then both or either may, on obtaining that age, declare the marriage *void;* but if at the age of consent (fourteen and twelve respectively) they agree to continue together, they need not be married again (2 Steph. Blackst. 257).

Where either party is under twenty-one (not being a widow or widower, who are emancipated as to age), the parent or guardian can forbid the banns, or enter caveat against the grant of license; but the marriage is neither void nor voidable, as in the last case. To obtain a license, oath has to be made, either that the parties are of age, or that the parents or guardians consent, or that there are none (4 Geo. IV. c. 76, §§ 16, 17, 18); and where a false oath is made, the offending party forfeits all property accruing by the marriage (*ib.* § 23).

Where the consenting parties are incompetent or abroad, or improperly refuse, the Court of Chancery on petition will interfere (*ib.* § 17).

3. If the parties are related by consanguinity or affinity within the prohibited degrees, the marriage is *void*, and such consanguinity is contracted by illicit intercourse as well as legitimate (*ib.* § 14).

4. Want of reason (15 Geo. II. c. 33); *i.e.*, if the persons contracting, or either of them, are found to have been lunatic or unsound by commission, the marriage is *void*.

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5. If the parties, or either of them, be unwilling, *i.e.*, married forcibly, the marriage is *void*, for "*consensus, non concubitus, facit nuptias;*" and the Church of Rome makes much use of the principle involved in this, in avoiding marriages otherwise indissoluble.

6. If there be an absence of forms and ceremonies required by law; *i.e.*, if the parties knowingly and wilfully intermarry either (*a*) in any other place than a church or chapel, where banns may be lawfully published, unless by special license, or (*b*) without due publication of banns[1] or proper license (Dormer *v.* Williams, 1 Curt. 870), or (*c*) consent to or acquiesce in such marriage by any person not in holy orders (except, of course, by the registrar, under the Act of Will. IV.), the marriage is *void*.

Civil Marriages.

As to civil-contract marriages, under the 6th & 7th Will. IV. c. 85, the reader is referred to that Act, and the 19th & 20th Vict. c. 119, amending it.[2]

In facie Ecclesiæ.

If the parties are to be married according to the rites and ceremonies of the Established Church, there must be either (*a*) banns, or (*b*) license, or (*c*) the registrar's certificate.

By Banns.

By 4 Geo. IV. c. 76, § 2, it is enacted "that banns of

[1] A marriage has been set aside where *both* parties were aware that the banns were published so as to conceal their identity. (See *infra*.)

[2] It is conceived that the clergy are bound to recognise civil marriages, and would not be justified, in the present state of things, in treating the parties as other than man and wife. (See Davis *v.* Black, 1 Q. B. Rep. 900, and Reg. *v.* Moorhouse, 3 Carrington and Kirwan 167.) As to whether an action lies against a clergyman for refusing to perform the marriage ceremony in any case, see the former case.

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"marriage shall be published in an audible manner in "the parish church" or chapel (where banns are authorized), "according to the form of words prescribed "by the rubric prefixed to the office of matrimony in "the Book of Common Prayer, upon three Sundays "preceding the solemnization of the marriage, during "the time of morning service, or of evening service "(if there shall be no morning service in such church "or chapel upon the Sunday upon which such banns "shall be published), immediately after the second "lesson;" and it is conceived to be clear that under this section and the present rubric the banns should be published *at morning*, as well as evening *service*,[1] after the second lesson.

Where.

If the parties reside in different parishes or chapelries, then the banns are to be published in each church or chapel, and the marriage shall be solemnized in one of the churches or chapels where the banns shall have been published, and in no other place whatever; and in the case of such double publication, the clergyman marrying should require a certificate of the publication by the incumbent of the other place of publication (Cripps, 742). Where the church is under repair, or temporarily pulled down, the banns may be published in the

[1] It has lately been contended that under the words of 4 Geo. IV. c. 76, § 2, and the rubric as it formerly stood, the banns of marriage should be published in the morning after the Nicene Creed. But it is apprehended that this contention is at variance with the true grammatical construction of the Act, and that if any doubt could be reasonably entertained as to the meaning the practice of a hundred and thirty years would be accepted as a safe guide on the subject. The fact that the rubric was altered to suit the Act seems rather corroborative than otherwise of the propriety of the old custom.

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church or chapel of any adjoining place in which banns are allowed (*ib.* 726): and by 11 Geo. IV. c. 18, § 2, the bishop may, where a church is rebuilding or under repair, order and direct that banns of marriage may be published and marriages solemnized in any consecrated chapel of such parish or place, until the church shall be opened again; and such chapel is to be deemed to be the parish church for the time being. The fees are to be applied as the bishop, with the incumbent's consent, shall direct. By sec. 4, the validity of such marriages is not to be questioned.

If both parties live in an ecclesiastical district in which marriages are solemnized, they must be married there, and not in the parish church (59 Geo. III. c. 134, § 17); and so as to "new parishes," *sed quære*, if the district be formed under the 1st & 2d Will. IV. c. 38.

After a marriage is solemnized, proof of the dwelling of the parties is not necessary in support of the marriage (19 & 20 Vict. c. 119, § 17, and 4 Geo. IV. c. 76, § 26).

Notice before Banns.

A clergyman is *entitled* to require seven days' previous notice of the names and place and time of abode (4 Geo. IV. c. 76, § 7), and it is incumbent on him to inform himself, to the best of his power, as to the names and residence of the parties, or he must take the consequence (see 16 Ves. 261); in which case Lord Eldon says that a marriage is good by banns, though neither party resided in the parish; *sed quære*, if the parties both *know* it (§ 22 of the 4th Geo. IV. c. 76). If false names are used fraudulently with the knowledge of *both* parties, it seems that the marriage is void (2 Curt. 833, 2 Cons. R. 238, and *supra*).

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By the 7th and 8th Will. III. c. 35, a clergyman marrying persons without a license, or *due* publication of banns, is to forfeit 100*l*. And he may also be punished in the Ecclesiastical Court for publishing banns between persons not parishioners, or resident in his parish, and also for marrying them (1 Curt. 69). But this does not apply if the parties have been married by the registrar, or in a dissenters' chapel duly registered for marriages (Prid. Chwdns. p. 386). Liability of Clergymen.

A clergyman marrying a ward in Chancery without the leave of the Court, commits a contempt of Court, for which he may be committed to prison, although he were ignorant of the fact. He is presumed, by law, to know it; but if he had used all proper precautions he would doubtless be deemed exculpated (19 Ves. 451). And in *large* parishes, inquiry in all cases is an absolute impossibility. Ward in Chancery.

Banns may be forbidden by any person, for any of the reasons already stated as invalidating a marriage, but on no other grounds, except that, if either is under age, the parents or guardians may forbid the banns, in which case they are void (4 Geo. IV. c. 76, §§ 16—18). Forbidding Banns.

The churchwardens are to provide a proper book prepared as the register-book for banns and marriages, and the banns should be published by the clergyman therefrom (Can. 70). Register.

If the parties are not married within three calendar months after the banns are completely published, the clergyman should require the banns to be republished, otherwise the marriage will be void (Cripps, 731). Republication.

(*b*) *Marriage by License.*— A license is merely a faculty for dispensation with publication of banns; an License.

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authority to marry without publication of banns; so that, it would seem, if a marriage in a given parish or church, or between certain parties, would have been improper or void by banns, on the ground of non-residence, etc., it is equally improper or invalid if by license.[1] A license after three months from the grant is void (4 Geo. IV. c. 76, § 19).

The clergyman is not, to the same extent, put upon inquiry as he is in the case of marriage by banns, since the license presupposes certain necessary preliminaries; but if he has notice, or fair grounds of suspicion, he should make inquiry. Thus, no license is to be granted, except for the church or chapel of the parish or chapelry, where one of the parties has resided fifteen days immediately preceding (4 Geo. IV. c. 76, § 10); but after marriage such residence need not be proved (§ 26).

Residence necessary.

Fee.

The fee for marriage licenses is 2*l.* 13*s.* 6*d.*, including 10*s.* for the stamp.

Special Licenses

A *special* license enables the parties to be married out of the proper parish or place; in fact, authorizes the marriage at any time and in any place. (See 25 Hen. VIII. c. 21; 4 Geo. IV. c. 76, §§ 10 and 20; and 6 & 7 Will. IV. c. 85, § 1.)

Certificate of the Registrar.

(*c*) *Marriage by Certificate of the Registrar.*—This certificate "stands instead of banns" (6 & 7 Will. IV. c. 85, § 4, and 19 & 20 Vict. c. 119, § 4), and the clergyman is bound to marry upon it, "in like manner as after publication of banns" (but see 1 Vict. c. 22, § 36). The same preliminaries and caution therefore are necessary

[1] But see Tuckness *v.* Alexander (32 Law Jo. Ch. 794), where it was said that the minister has no option, but must perform the marriage according to the license.

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here, as in the case of marriage by banns (Cripps, 738). The section under reference (§ 4) provides, indeed, "that the church in which the marriage is solemnized shall be within the district of the registrar who grants the certificate;" but this, it is conceived, does not justify the solemnization of the marriage in any church other than that in which the parties could have been legally or properly married by banns. Indeed, the preliminary formalities in the case of the certificate are, *mutatis mutandis*, the same as in the case of banns (see §§ 4—6), and it is so held by the Registrar-General, whose "Instructions to Inspectors" state that the marriage must be in the district or chapelry in which one at least of the parties resides.

By the late Act (19 & 20 Vict. c. 119, § 11), marriage on the registrar's *certificate* is not to be solemnized in any church or chapel of the Established Church without the consent of the minister thereof.

And by section 12, if the parties "have contracted marriage at the registry office of any district, and desire to add the religious ceremony ordained or used by the church of which they are members, they may present themselves for that purpose to a minister of the church or persuasion of which they are members, after notice, and on production of their *certificate* of marriage before the registrar, and on payment of the customary fees (if any), he may, if he think fit, in the church whereof he is minister, read or celebrate the Marriage Service; but such reading or celebration is not to be entered among the marriages in the parish register. (See sect. 11, as to effect of registrar's *license*.)

Probably, in this particular case, *any* clergyman may

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perform the marriage ceremony for the parties, without reference to their place of residence, provided only that marriages are authorized to be solemnized in his church or chapel.

General Remarks.

It will be seen that the policy of all the formalities required previous to marriage, in any manner (whether ecclesiastically or merely by the civil process), is substantially the same, viz., to prevent clandestine and improper marriages; *i.e.*, marriages of parties incapacitated by want of age, or of mental incompetence, or by consanguinity or previous marriage.

To this end, a rigid restriction as regards the *residence* of the parties prior to marriage is imposed, and necessarily so; and therefore it behoves all who by law act in the celebration of the ecclesiastical rite, or towards giving ecclesiastical efficacy to the civil contract of marriage, to look carefully to this prerequisite.

In this respect the subdivision of large parishes is, in a social point of view, greatly to the public interest, and the courts of law would, it is apprehended, feel constrained, in otherwise doubtful cases, to decide in accordance with the evident policy of the Legislature on this important social question.

Further requisites.

The Marriage itself.—The preliminaries being rightly observed, the clergyman must bear in mind that it is further necessary to an (ecclesiastical) marriage:—(1) That it be performed in the parish church, or the district church of the parties, duly licensed; (2) by a minister of the Established Church; (3) according to *all* the rules prescribed by the rubric (6 & 7 Will. IV. c. 85, § 1); (4) between eight and twelve o'clock in

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the forenoon, upon pain of suspension, or felony, with transportation for fourteen years (4 Geo. IV. c. 76, § 21); and (5) in the presence of at least two credible witnesses, besides the clergyman (§ 28). A clergyman cannot perform his own marriage ceremony (Beamish *v.* Beamish, 9 H.L.C. 274).

Clergymen refusing to marry.

A clergyman is punishable, under the Discipline Act, for improperly refusing to marry, these requisites being duly fulfilled; but it is undecided whether he would be liable to an action. Probably he *would* be held liable.

Register of Marriage.

It is the duty of the clergyman to register the marriage in duplicate in the books furnished for the purpose by the Registrar-General, as directed in such book, and by the Act 6 & 7 Will. IV. c. 86, §§ 17, 30, 31, which see.

Quarterly Return to Registrar-General.

Every January, April, July, October, the clergyman is to return to the superintendent-registrar of his district a copy, certified under his hand, of all intermediate entries of marriages, under a penalty of 10*l.* after a month's default. He himself has the custody of the register, and must allow searches at "reasonable times," and give certified copies of any entries (1 Vict. c. 22, §§ 33, 35); and if he do not properly register marriages, or if he lose or injure the register, he forfeits 50*l.* (6 & 7 Will. IV. c. 86, § 42). If he wilfully make a *false entry*, it is felony (§ 43).

Correction of Errors.

Errors may be corrected by an entry in the margin within one calendar month after discovery, in the presence of the parties, or of the registrar and two witnesses (§ 44). The witnesses and registrar must attest the corrected entry. It must be made, according

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to the truth of the case, by entry in the margin, without any alteration in the original entry, and the day of the month of the correction must be also entered. The like entry must be made in the duplicate register-book and in the certified copy of the register-book, or, if the latter be already made, a certified copy of the original erroneous entry and of the marginal correction must be made.

Fees for Searches and Certificates.

The fee is 1*s.* for every search for not more than one year, and 6*d.* for every additional year; and 2*s.* 6*d.* for every certificate (§ 35).

The registrar pays to the clergyman 6*d.* for every entry in the certified copy (§ 27).

Stamps.

By 23 Vict. c. 15, every certified copy or extract of or from any register of marriage must bear a penny stamp, to be paid for by the person requiring such copy or extract. There is a penalty of 10*l.* for neglecting to affix and annul the stamp. The stamp is, however, not required in the case of copies furnished by any clergyman, &c., pursuant to any Act of Parliament, or to any general or superintendent registrar under any regulation, or where the person giving the copy or extract is not entitled to any fee (23 & 24 Vict. c. 3, § 16).

Questioning the Parties.

The clergyman may question the married parties as to the particulars to be registered; and they are guilty of perjury for making false statements (6 & 7 Will. IV. §§ 40, 41).

Marriage Fees.

No fee is due of common right to the clergyman for solemnizing a marriage, although it is said in the rubric to the office of matrimony, that at the time of delivering the ring the man shall also lay down the accustomed duty to the priest and clerk; but it is payable, by

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custom,[1] *when* the ceremony has been performed, (Steer, 178), and under the Church Building Acts the marriage fee is legally recoverable; for, by the 59th Geo. III. c. 134, § 4, the Church Building Commissioners might (and now the Ecclesiastical Commissioners, 19 & 20 Vict. c. 55, § 1, may) fix any table of fees for *any parish*, with the consent of the vestry, and for any extra-parochial place, district chapelry, and parochial chapelry, in which they have built a church, but with the further consent in *all* the cases of the bishop; and such fees may (§ 10) be "sued for and recovered" by the incumbent, clerk, and sexton, as any ancient legal fees. (But see, as to District Chapelries, 26 Law Jo. Exch. 380.) And this power applies to *fees generally*, as well as marriage fees. Under Church Building Acts.

Under the New Parishes Acts, the chancellor of the diocese fixes the scale of fees (6 & 7 Vict. c. 37, § 15) for marriages, churchings, and burials, no fee being legally payable under these Acts for baptisms or for registering them. Under New Parishes Acts.

Section 3, Division 2.—*Marriages Abroad.*

Marriages of British subjects in foreign countries are valid, if made according to the law of those countries (Steer, 179), unless the law contravenes public morals (as polygamy), or the law of nature, or the law of the country where it is wished to enforce it. So if resorted to in order to evade the English law, as in case of Valid when.

[1] The custom, however, must be reasonable (Bryant *v.* Foote, 37 L. J. Q. B. 217, where 10*s.* to the parson and 3*s.* to the clerk was held rank and illegal in an agricultural parish).

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marriage with a deceased wife's sister. (See note, division 1, *supra*, page 135).

At British Ambassador's.

Marriages solemnized by a minister of the Established Church in the chapel or house of a British ambassador or minister, or in the chapel of any British factory, or in the house of a British subject abroad, as also marriages solemnized within the lines of a British army serving abroad, are valid by the 4th Geo. IV. c. 91, and under the 12th & 13th Vict. c. 38.

Before or by British Consul.

British subjects residing in foreign countries where there is resident a duly-authorized British consul, may be married upon one calendar month's notice in a prescribed form to the consul, stating their names, profession, or condition, and that each party has dwelt within the consular district one calendar month at the least. The consul files the notice, registers it in a book, and suspends a copy in the office of the consulate. Persons duly authorized may forbid the solemnization of a marriage. The consul may also grant a *license* to marry, but the like consents are required as in England, and caveats may be lodged with the consul accordingly.

After seven days if by license, or twenty-one days without license, the marriage may be solemnized at the consulate, either by the consul or in his presence, or by or in the presence of any person acting in his stead under the 31st & 32d Vict. c. 61, and in the presence of two other witnesses.

Fees for.

The marriage fee, if by license, is 20*s*., if otherwise, 10*s*.

Frauds in.

To prevent all fraudulent marriages in this way the guilty party forfeits all property accruing by the marriage (6 & 7 Will. IV. c. 85).

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Section 3, Division 3.—*Divorce.*

In lieu of divorce *a mensa et thoro*, the new Court of Divorce may decree, on the petition of husband or wife, a "judicial separation," on the ground of adultery, or cruelty, or desertion without cause for two years and upwards. By it the wife acquires, as to property and many other purposes, the condition of a single woman, but neither party can marry again (20 & 21 Vict. c. 85). Judicial separation.

A divorce or dissolution of marriage, enabling the parties to marry again, may be obtained, by the husband upon the ground that since the marriage the wife has been guilty of adultery,—by the wife, that he has, since the marriage, been guilty of incestuous adultery, or bigamy with adultery, or rape, or unnatural crime (such as in the Act mentioned), or of adultery coupled with such cruelty as would, without adultery, have entitled her to a divorce *a mensa et thoro*, or coupled with desertion without reasonable excuse, for two years or upwards; but not if the petitioner has connived at or *condoned* the act, or the petition is collusive. Dissolution of Marriage.

On a decree for dissolution of the marriage there may be an appeal to the House of Lords; but when the time limited for that purpose has expired without any appeal, or if, on appeal, the marriage is declared to be dissolved, either party may marry again, as if the prior marriage had been dissolved by death.

Under the late Divorce Act, no clergyman can be compelled to marry any person whose marriage has been dissolved for *adultery;* but if he refuse, any other Marriage of divorced parties.

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clergyman, entitled to officiate in the same diocese, may perform the Marriage Service in the church or chapel of the clergyman so refusing.

Section 4, Division 1.—*As to Burials generally.*

Right of Burial.

Every person has a *common-law* right to be buried in the usual way in the churchyard of the parish *in which he dies*, whether he be a parishioner or a stranger; and if he die out of his own parish, his relatives, &c., may claim to have him buried in the churchyard of his own parish (Rogers, Eccl. Law, p. 119). The *mode* of burial, however, is of ecclesiastical cognisance, where an unusual course is adopted.

It is an offence not to bury a dead body, and *the person in whose house the death occurs* must, by the common law, provide for the burial; and, if under the direction of the guardians or overseers of the poor, at the expense of the parish (*Ib.* 709, 7 & 8 Vict. c. 101, § 31). The parent must, if able, bury the child. (See as to *Parents*, 21 Law J.M.C. 39; as to *Relatives*, 13 M. & W. 252; as to *Hospitals*, &c., 12 A. & E. 773.)

Non-parishioners.

It is matter of favour to allow persons dying out of the parish, unless parishioners, to be buried in it, at the discretion of the churchwardens[1] and incumbent (1 Hagg. C.R. 17; 6 Taunton's Reports, 277).

Minister cannot refuse.

The minister must not refuse to bury and read the Burial Service on having convenient warning (Can. 68; 12 Ad. & Ellis, 773); and if he refuse he may

[1] See Prid. Chwdns. p 364, n. g., as to incumbents' exclusive right to *prohibit* burials of strangers.

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be suspended (2 Curt. 692), although the deceased be the child of a Dissenter (Kemp. *v.* Wicker, 3 Phil. 264), or only baptized by a layman (Escott *v.* Martin, 6 Jur. 765), or died in a state of intoxication (Cooper *v.* Dodd, 2 Rob. 270); and *mandamus* will also lie to enforce burial in such cases (2 B. & A. 806); but the clergyman may fix his own hour for the funeral. Dissenters, etc.

By the 6th & 7th Will. IV. c. 85, § 7, the clergyman should require the production of the registrar's certificate of death. The coroner may order interment before registration of the death (*Ib.* sec. 27). In case of burial taking place without the registrar's certificate, the officiating clergyman must give notice thereof to the registrar within seven days (*Ib.*).

Persons unbaptized, excommunicate, or who commit *suicide* and are found *felo-de-se*, are excluded from Christian burial (Can. 68, and the rubric confirmed by the 13th & 14th Car. II., c. 4). Suicides.

Shipwrecked bodies must, under the 48th Geo. III. c. 75, be buried by the churchwardens and overseers of the parish in which the bodies are cast up, and the expenses are to be paid by the county treasurer (§1). Shipwrecked Bodies.

The minister cannot, however, be compelled to bury in any particular vault or part of the churchyard (Expte. Blackmore, 1 B. & Adol. 122). He has a discretion, unless perhaps there be a prescriptive right (see 8 Barn. & Cres. 295, Com. Dig. Cemetery), and a custom to the contrary is void (2 Willes, 20); and he may refuse to allow the corpse to be carried into church, as in cases of infection (1 Burn, E. L. 267). Particular Vault, etc.

No grave is to be at less distance than 20 feet from the external walls of churches built under the

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Church Building Acts (58 Geo. III. c. 45, § 80), and none at all *within* those churches.

In the Church itself.

There is no right of burial in the church itself, unless there is a faculty or a prescriptive right (Gibs. 453; Steer, 72). The right of consent or refusal to burials *within the body of the church* rests with the incumbent alone (Croke's Rep. James I. 367), and in the chancel with the rector, whether lay or spiritual (*ib.* 27), but he cannot grant a future right to bind his successor (Cripps, 762.) A faculty for a vault will not be granted where the entrance is not in consecrated ground (Rugg *v.* Kingsmill, 37 L.J.N.S. Ecc. 13).

Tolling Bells.

The passing bell should (Can. 67) be tolled "when any is passing out of this life;" and if he die, then one short peal, and one before the burial and one after.

Burial Service.

The service should be read, whether the relatives desire it or object (Cripps, 772; and see 5 Geo. IV. c. 25, § 4; Kemp *v.* Wickes, 3 Phil. 264).

Fees.

None are due of common right, but only by the immemorial custom of each parish, or by a local or other statute.[1] The clergyman, however, cannot, *in any case*, refuse to bury until the fee is paid (2 Hagg. C. R. 355).

If the custom is not in question, the Ecclesiastical Court can, perhaps, enforce the fee (2 Curt. 11). If the custom be in dispute, the fee must be recovered in the common-law courts.

[1] A jury would probably infer a custom from modern use and regular payment consistent therewith (Spry *v.* Gallop, 16 M. & W. 716), unless the contrary can be proved by evidence direct or presumptive, as from the unreasonableness of the amount (Bryant *v.* Foote, 37 L. J. Q. B. 217).

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No fee can be demanded by the clergyman of the parish in which a person died, but in which he was not buried (Steer 80), unless, perhaps, by ancient custom (Gibs. 452), or by statute, as under the Burial or Cemetery Acts. (See following section.)

The fee generally is 3*s.* 4*d.* for the churchyard, and 6*s.* 8*d.* for the floor of the chancel (Degge, p. 146; Gibs. 452; 3 Phil. R. 348).

Disinterring.

After burial the body may not be disinterred without a faculty from the ordinary or the coroner's order, and so doing is a punishable offence (Gibs. 454; 26 Law J. M. C. 47; 20 & 21 Vict. c. 81, § 25).

Section 4, Division 2.—*As to Burials under the New Burial Acts.*

Closure of Old Burial-grounds.

The Queen in Council, on the representation of the Secretary of State, may order the discontinuance of burials in *any* burial-ground (16 & 17 Vict. c. 134, § 1; 15 & 16 Vict. c. 85, §§ 10—42, & §§ 44, 50, 51, & 52), except in such joint-stock cemeteries as may have been established under the special authority of Parliament (§ 5) (Reg. *v.* Justices of Manchester, 5 Ell. & Bl. 702). And any person assisting at any burial in violation of such order is guilty of a misdemeanor (§ 3), and liable to a penalty of 10*l.* (18 & 19 Vict. c. 128, § 1). But license may be granted, under certain circumstances, by the Secretary of State, for the continued use of private vaults and graves; but this is only where the right to interment was existing *at the time of the passing of the Act* (16 & 17 Vict. c. 134, § 4). No new burial-ground can be opened in any closed

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district without the approval of the Secretary of State (§ 6), and see "Churchyards."

Appointment of Burial-boards.

The churchwardens of any parish, new parish, township, or district, whether separately maintaining its own poor or not (20 & 21 Vict. c. 81, § 5), *may*—and if any Order in Council has been made, or notice given to close the burial-ground, they *must*—call a meeting of the vestry, to determine whether a new burial-ground shall be provided for the parish (18 & 19 Vict. c. 128, § 3),[1] and then to appoint a burial-board, consisting of not less than three, or more than nine persons; the incumbent being eligible, though not a ratepayer (15 & 16 Vict. c. 85, § 11). Vacancies to be filled up by the vestry (*Ib.* § 12). Vestries of two or more parishes or places may concur in providing one common burial-ground; or one burial-ground may be appointed for several united parishes (18 & 19 Vict. c. 128, § 11); or for parishes, districts, or townships not separately maintaining their own poor, but having separate burial-grounds (§ 12); or for parishes, districts, or other subdivisions, being parts of parishes maintaining their own poor (§ 13).[2]

In parishes where *no* burial-board has been appointed, the churchwardens may, at *their discretion*, convene a vestry of ratepayers; and, if they unanimously so resolve, a new burial-ground may be conveyed and settled in all respects as the existing burial-ground (18 & 19 Vict. c. 128, §§ 3 and 10).

[1] See Reg. *v.* Sudbury Burial-Board, 1 Ellis Blackburn & Ellis's Reports, 264, as to places, not parishes, having burial-boards.

[2] Extra-parochial places "are parishes for the purpose of burials and registration thereof" (20 Vict. c. 19, and see p. 158).

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In boroughs the town council may, by Order in Council, be appointed the burial-boards for their respective boroughs (17 & 18 Vict. c. 87, §§ 1—3); and so also may local boards of health (20 & 21 Vict. c. 81, § 4). In boroughs the expense may be either charged on the borough funds or rates (17 & 18 Vict. c. 87, § 3), or raised by a separate burial-rate (20 & 21 Vict. c. 81, § 22).[1] The City Commissioners of Sewers are the burial-board for the City of London (15 & 16 Vict. c. 85, § 43). In Boroughs.

The burial-board, when constituted, proceeds to provide a new burial-ground, either within or without the parish, new parish, township, or district (15 & 16 Vict. c. 85, § 25; 20 & 21 Vict. c. 81, § 5). No burial-ground, *under these Acts*, can be opened within one hundred yards of any dwelling-house, without the consent, in writing, of the owner, lessee, and occupier (*Ib.* 17 & 18 Vict. c. 87, § 12; 18 & 19 Vict. c. 128, § 9). Part of such new burial-ground is to be consecrated, and part unconsecrated (16 & 17 Vict. c. 134, § 7). And see 20 & 21 Vict. c. 81, §§ 11, 12, as to *fences* not being necessary between them. As to providing New Burial-grounds.

Ample powers are given for the purchase of lands for burial-grounds; and burial-grounds provided under the Church-Building Acts, by money borrowed, may be transferred by the incumbent, with the consent of the ordinary, subject to the debt, if any (20 & 21 Vict. c. 81, § 7).

Burial-boards may, under 15 & 16 Vict. c. 85, § 28, reconvey or let (18 & 19 Vict. c. 128, § 17) lands not Surplus and may be sold, etc.

[1] As to appropriation of borough lands, fees, &c., see 17 & 18 Vict. c. 87, §§ 6—11.

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wanted; and may appropriate, with approval of vestry, parish lands (15 & 16 Vict. c. 85, § 29). Vestries may purchase closed burial-grounds situate in the parish, but belonging to another parish (20 & 21 Vict. c. 81, § 8).

Laying out.

The burial-board may lay out ground to the satisfaction of the bishop previous to consecration, and chapels may be built thereon for Churchmen and Dissenters (15 & 16 Vict. c. 85, § 30). The ground may be either divided into consecrated and unconsecrated portions (16 & 17 Vict. c. 134, § 7; 18 & 19 Vict. c. 128, § 14), or separate and distinct grounds may be provided (20 & 21 Vict. c. 81, § 3); the expenditure to be approved by the vestry, or in default by the Secretary of State (18 & 19 Vict. c. 128, § 6). Burial-boards having burial-grounds adjoining each other, may contract with each other for use of chapels in common (§ 16), and joint burial-boards may be dissolved (20 & 21 Vict. c. 81, § 2).

Chapels thereon.

Rights of Parties.

The new burial-ground, when consecrated, shall be the burial-ground of the parish, in which all parties shall have the same rights, fees, &c., as in the old ground (15 & 16 Vict. c. 85, § 32, and 20 & 21 Vict. c. 81, § 5). Burial-boards may sell rights of burial in vaults, and may erect monuments, etc., reserving such fees to the incumbent, in lieu of fees to which he would be entitled in the burial-ground of his parish, as shall be fixed by the vestry, with the approval of the bishop, or as he would have been entitled to by law, should no such settlement of fees have been made (§ 33). The burial-boards fix such other fees for interments, etc., as may be approved by the Secretary of State (*Ib.* § 34; 18 & 19 Vict. c. 128, § 7); and the fees in the consecrated and

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unconsecrated portions of ground are to be the same (20 & 21 Vict. c. 81, § 17). Churchwardens' previous rights to fees are reserved to them (15 & 16 Vict. c. 85, § 36). Vestries may, with the approval of the bishop, revise the fees payable to incumbents, clerks, and sextons, or may substitute fixed annual sums (§ 37). The general management of the burial-ground is vested in the burial-boards (§ 38). Arrangements between incumbents of two or more parishes as to the performance of burials, etc., may be made, and be confirmed by the bishop (§ 39). The compensation fee to incumbents for pauper burials in cemeteries is not to exceed 1*s.*, or the sum received in his parish ground; but in no case to exceed 2*s.* 6*d.* (§ 49). And the same limit applies to burials at the expense of hospitals (16 & 17 Vict. c. 134, § 7).

Pauper Burials.

Registers are to be duly kept, entries in which are to be evidence; and searches may be made and extract taken, as under the Registration of Births, Deaths, and Marriages Act (16 & 17 Vict. c. 134, § 8). Persons wilfully destroying or injuring the registers, or making false entries, or giving false copies, are guilty of felony.

Registration of Burials.

The incumbent and churchwardens of any parish having a chapel not locally situate in the parish, the burial-ground of which chapel shall have been closed, may convey such chapel to new trustees, for the use of the parishioners of the parish in which it is situated (15 & 16 Vict. c. 85, § 51).

As to closed Grounds.

Burial-boards or churchwardens are to keep in decent order parish burial-grounds which have been closed, and are to repair the walls and fences thereof (18 & 19 Vict. c. 128, § 18). And see Chap. VII.

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As to Fees.

Where, *at the time of the discontinuance* of interments in any burial-ground, the fees in respect of burials therein are divided between the incumbent of the parish and the incumbent of any district parish, or other ecclesiastical district, each incumbent shall have the same proportion of the fees in the burial-ground to be provided under the Burial Acts, as he was entitled to in respect of interments in the old burial-ground (15 & 16 Vict. c. 85, § 35; and *ante*, p. 151).

And by the same Act (§ 52) the following words and expressions have the several meanings assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say, the word "parish" means every place having separate overseers of the poor, and separately maintaining its own poor.[1] The words "incumbent" and "minister" *(in respect of any fee made payable to an incumbent or minister under the Act)* mean the clergyman who would have been entitled to the fee had the body been buried in the churchyard or burial-ground of the parish from which it came, *or in the burial-ground of the ecclesiastical district, in case such district had a burial-ground at the passing of the Act;* and if any difference arise between two or more persons severally claiming to be such incumbent or minister, such difference is to be determined by the bishop of the diocese. (See Day, clerk, *v.* Barnsley Burial Board, 6 N. R. p. 156; Gell *v.* Burial Board of Birmingham, 10 L. T. N. S. 497, Q.B.)

The expression "churchwardens" means also chapel

[1] This has been held to include parishes *jointly* maintaining their own poor.

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wardens, or other persons discharging the duties of churchwardens.

As to New Parishes and Districts.

Under the 5th section of the 20th & 21st Vict. c. 81 (the Burial Acts Amendment Act), *until* a burial-board is provided for a "new parish" or "district" created under either of the three New Parishes Acts, *and to which they apply* (*i.e.*, under the Church Building Acts also), the incumbent, clerk, and sexton are (*if* any burial-ground has been provided under the Burial Acts for the original parish of which they form part) to perform the same duties as to burials in such ground, and have the same rights and privileges, fees and emoluments, as if the burial-ground were exclusively that of the new parish or district, *but* without prejudice to the rights of incumbents, clerks, or sextons of such original parishes existing at the passing of the Act, *i.e.*, the 25th of August, 1857. In the cases, therefore, of new parishes and districts which had no separate burial-grounds at the passing of the Burial Act of 1852 (1st July, 1852), (15 & 16 Vict. c. 85, § 52), or the incumbents of which, when interments were discontinued, had no right to any portion of the burial fees (15 & 16 Vict. c. 85, § 35), or which are not part of original parishes, for which a burial-board has been or shall be appointed (20 & 21 Vict. c. 81, § 5), it appears from what has been stated that until they get burial-boards of their own, or until a burial-board is appointed for the original or mother-parish, their incumbents, &c., have no right to any burial-fees, or to inter their own parishioners; and in the last case they do not so become entitled until the avoidance, or without the consent, of the incumbent of the mother-parish who may

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have been such incumbent on the 25th of August, 1857.

Cemeteries Clauses Act.

Under this Act (in the case of all joint-stock cemeteries, tho special Acts of which incorporate the Cemeteries Clauses Consolidation Act, sections 52 to 57, or contain similar provisions), the cemetery company are bound, on the burial of everybody in the consecrated portion of the cemetery, to pay to the incumbent of the parish or *ecclesiastical district* from which the body was removed for burial, such fee, if any, as is prescribed in the special Act of the company (§ 52). (Vaughan *v.* South Met. Cemetery, 7 Jurist, N.S. p. 159.) The company are to keep accounts of all such burials (§ 53), and to render them half-yearly to the incumbent (§§ 54, 55). The incumbent *for the time being* receives the amount, and is to account to his predecessor for any fees which belong to him (§ 56).

The special Act of every cemetery company should be consulted in order to ascertain whether it contain provisions apportioning the fees payable to incumbents. For further information as to burials under the Burial Acts, the reader should consult "Glen's" or "Baker's" Burial Acts.

Section 5.—*As to Baptism.*

Where.

Baptisms were performed originally publicly in rivers. Subsequently (but still by immersion) in fonts at the entrance of the churches. Afterwards (Can. 81) a stone font was directed to be set up in every church, in the ancient usual place, *i.e.*, at or near the west end; and there, and there only, should baptism be publicly admi-

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nistered. Children should be baptized in the church (rubric), *i.e.*, the church of the parish in which they are born; but upon great cause may be baptized at home; and if the minister is duly informed of the weakness and danger of death of an infant, he must not fail to baptize it speedily and privately, under penalty of suspension (Can. 69).

The direction of the rubric should in strictness be observed; still custom has sanctioned frequent departures from it (Cripps, 695). How.

Baptism should be ministered on Sundays or other holidays (but, if necessary, on any other day), either immediately after the Second Lesson in the Morning or Evening Service, at the discretion of the clergyman. (See rubric.) When.

There should be, for a male child, not less than two godfathers and one godmother, and for a female child not less than two godmothers and one godfather (rubric). All should be communicants, and the father must not stand as sponsor (Canon 29).[1] Sponsors.

"Wanton names which do sound to lasciviousness" must not be given (Lind. 245), and the bishop might change such names at confirmation (1 Inst. 3a, 1 Burn, E. L. 110); but it is conceived that he could not do so now, as such a practice is not authorized by the Book of Common Prayer, and would therefore be in violation of 13 & 14 Car. I. c. 4. (See Stephens on the Common Name.

[1] The attempt to alter this Canon was, it seems, futile. Convocation, even with leave from the Crown, cannot alter any Canon which has been confirmed by the Act of Uniformity. An Act of Parliament is necessary. This is supported by the opinions of Sir F Kelly, Lord Cairns, Mr. A. J. Stephens, Q.C., and others. (And see Chap. II.)

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Prayer, vol. iii. 1491.) Christian names cannot therefore be changed, although a surname may be changed at pleasure.

Essentials to valid Baptism.

These are only the invocation of the Holy Trinity and the element of water—"verbum et elementum." Private baptism (rubric) and lay baptism (Steer, 151) are sufficient, and entitle to burial according to the rights of the Church (Escott *v.* Martin, 4 Moore, P. C. c. 104; 2 Curt. 692; and see Gorham *v.* Bishop of Exeter, 14 Jur. O.S. 443).

Lay Baptism

Is an irregularity only, not a nullity (same cases).

Fees.

No fee is due of common right, nor unless by custom, and no action lies for the fee when the office is performed by another (1 Salk. 332). No fee can be taken for baptisms, or the registration thereof, in districts and new parishes formed, or, as it is conceived, becoming such, under the New Parishes Acts of 1843, 1844, and 1856 (6 & 7 Vict. c. 37, § 15), nor are these fees to be taken in "District Chapelries" for baptisms authorized by supplemental order under the 14th & 15th Vict. c. 97, § 17.

All baptisms, public and private, must be registered (52 Geo. III., c. 146, § 3).

Section 6.—*The Lord's Supper.*

When to be celebrated.

Not unless three at least communicate (2 Burn, E.L. 425). Every parishioner should do so at least three times a year, Easter being one (Gibson, 387). In collegiate churches and cathedrals it should be celebrated every Sunday, at the least, unless there be reasonable cause to the contrary (rubric).

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By the Canons 26 and 27 it is to be refused to those who offend by adultery, incest, drunkenness, swearing, ribaldry, usury, malicious and open contention with their neighbours, openly living in notorious sin, or other uncleanness or wickedness of life; and it is doubtful if any action lies against the minister for refusing to administer the Sacrament to any particular individual (Steer, 153; 1 Sid. 34). To whom it should be refused.

Notice should be given by the minister of its administration on the preceding Sunday, or holiday; and those intending to communicate, should, in strictness, give notice to the minister at least the day before (Cripps, 788). Notice by and to the Minister.

This must be in both kinds (1 Edw. VI.), and may be privately, when necessary; but in no such case to one person only. There must (according to the rubric) be three, or two at the least. How to be administered.

Alms for the poor and oblations for the minister should be collected by the deacons, wardens, or other fit persons, to be taken to the minister of the parish, to be disposed of after Divine Service, and employed in such pious and charitable uses as he and the churchwardens think fit, or, if they disagree, by the ordinary (2 Burn, E. L. 427). If collected in a chapel (*i.e.*, a chapel of ease or proprietary chapel), they should be paid over to the minister and churchwardens of the parish (2 Hagg. E. R. 30, and Rubric, and *supra*, Chap. V. Div. 1). The Offertory.

The same rule will apply to the offertory in "new" and other *parishes* formed under these Acts and the New Parishes Acts. Under Church Building Acts.

In district chapelries and consolidated chapelries the

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alms are disposed of by the minister and churchwardens thereof (8 & 9 Vict. c. 70, § 6).

Reviling. Reviling the Lord's Supper is punishable by imprisonment under the 1st Edw. IV. c. 1, § 1.

Section 7.—*Churchings.*

This service appears, from the Book of Common Prayer, to be designed—1, for *all* women safely delivered in childbirth; and, 2, to be performed during the Morning Service on a Sunday, or perhaps also on a week-day.

It would therefore seem (*a*) that a clergyman would *not* be justified in refusing to perform the service for an unmarried woman (Baron Alderson in R. *v.* Benson, clerk, quoted in Prid. Churchwardens' Guide, 388), and (*b*) that he *would* be legally justified (subject, perhaps, to the control of the bishop) in refusing to perform the office, except during or immediately after the full Morning Service.

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CHAPTER XII.

The Ecclesiastical Commission.

Some notice of this important corporate body appears to be desirable.

When appointed.

These Commissioners were appointed by the 6th & 7th Will. IV. c. 77, with power to hold land, notwithstanding the statutes of mortmain.

Duties.

They were to mature and lay before the king in council schemes for the improvement of the ecclesiastical system, both as regards the state of the several dioceses, the amount and management of their revenues, and the more equal distribution of their duties, the state of the cathedral and collegiate churches, and as to the best mode of providing for the cure of souls and the residence of the clergy in their cures.

Their powers sufficiently appear in other parts of this book, more particularly in those relating to parishes and their subdivisions, and to glebe and endowments.

Schemes of.

The schemes of the Commissioners, when ratified by Order in Council, duly registered in the diocese, and gazetted, become law.

Church Estates Commissioners.

Under the 13th & 14th Vict. c. 94, this Board has been appointed, forming a Committee of the General Board, and who regulate sales, purchases, exchanges, and the management, &c., of lands, &c.

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The property at their disposal, comprising certain deaneries, suspended canonries, sinecure rectories, and the endowments of other dignities, are to form a common fund, and be employed in augmenting the smaller bishoprics, and providing for the "cure of souls in parishes where such assistance is most required;" and where tithes are so applied, "due consideration is to be had of the wants and circumstances of the places in which such tithes arise" (3 & 4 Vict. c. 113, § 67, and 13 & 14 Vict. c. 94).

To report annually.

The Commissioners report their proceedings annually, on or before the 1st of March.

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CHAPTER XIII.

GLEBE, LEASES, ETC.

EVERY ancient church ought of right to have a manse and glebe (Com. Dig.). Glebe.

Ecclesiastical persons, whether rectors, vicars, or perpetual curates, are quasi-tenants for life only of the lands, &c., which they hold *jure ecclesiæ* (Crui. Dig. tit. 3, ch. 1). They may not, therefore, alienate, consume, or destroy those things which are not included in the temporary profits of the land, to the injury of their successors. Accordingly they are punishable in the Ecclesiastical Court, or may be restrained by injunction in Chancery, if they open new mines or gravel-pits, unless with consent of the patron and ordinary and the Ecclesiastical Commissioners (6 Jurist, N. S. 1288), (though they may work those already opened), or if they cut timber except for repairs (Cripps, 234, 3 Mer. 425); in which case the consent of the patron and ordinary, or the permission of the Court of Chancery, should be obtained (5 De G. & S. 174). Incumbent's Interest in.

But only the patron, or a person specially interested, could interfere by injunction (3 Mer. 425), unless in case of collusion between patron and incumbent, when the bishop may proceed (6 Jurist, N. S. 1288).

Prima facie, no rector or vicar can make any lease Leases.

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to bind his successor without the consent of the patron and ordinary (Co. Litt. 44).

Until the 6th & 7th Will. IV. c. 20, all ecclesiastical corporations, whether aggregate (as colleges, &c.) or sole (as parsons, vicars, &c.), were restrained by statute from making leases unless, 1st, they were for not more than twenty-one years or three lives.—2. Of lands commonly let for twenty years past.—3. The accustomed rent, or more, must be reserved.—4. Houses in corporate or market-towns might be let for forty years, the lessee repairing, and might also be exchanged for land of equal value.—5. The old lease (if any) must in general expire, or be surrendered, within three years.—6. The lease must not be without impeachment of waste[1] (and see 39 & 40 Geo. III. c. 41), nor could the parson himself commit waste. The consent of the patron was necessary (Co. Litt. 44) to leases of glebe.[2]

The law stated above prevails still, subject to the following alterations:—

Renewal of Leases.

By 6 & 7 Will. IV. c. 20, § 1, concurrent leases cannot be granted, *i.e.*, no new leases shall be granted until one or more of the lives in the previous lease shall die, and then only for the surviving life or lives, and the new life or lives to make up the original number of lives, not exceeding three. Where the previous lease was for a term of forty, thirty, or

[1] That is, the tenant must be restricted from cutting timber, pulling down buildings, &c., opening new mines, gravel pits, &c.

[2] A lease in excess of the power would, however, be good as against the incumbent, during his incumbency, though not binding on his successor.

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twenty-one years, then fourteen, ten, or seven years must have first expired respectively, unless it is shown to, and testified by, the archbishop, that for ten years before the Act a custom to renew for shorter periods had prevailed, and before the existing incumbency commenced (§ 4). A lease for years cannot be renewed with lives; but a renewed lease might be granted by way of exchange for the lives in being (§ 5). As to the consents required, see § 7.

Farming Leases.

Farming leases may, by the 5th & 6th Vict. c. 27, § 1, be granted for fourteen years, subject to the best yearly rent, payable quarterly without fine (the consent of the patron and bishop to be obtained), the lessee to be restricted from committing waste, and to covenant not to assign, to cultivate properly, to leave the lands and premises in good condition, to insure and reinstate the buildings in case of fire, the timber to be reserved with a power of re-entry on a breach of covenant. The term may be twenty years on an improving lease (§ 1). A surveyor, appointed by the bishop, patron, and incumbent, must previously have reported in favour of the lease (§ 3). The parsonage-house and ten acres of glebe lying convenient for occupation cannot be so let (§ 2).

Building and Improving Leases.

By 5 & 6 Vict. c. 108,[1] with the consent of the Ecclesiastical Commissioners (§ 21) and of the patron, and on the report of a surveyor appointed by the Commissioners and intended lessor, lands and houses may be leased for not more than ninety-nine years, on a building or a repairing or improving lease (§ 2); but

[1] Leases under this Act were void if any fine, or anything in the nature thereof, was directly or indirectly taken. (See next page.)

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this does not include the parsonage-house and pleasure-grounds, and ten acres of glebe, if convenient for occupation (§§ 7, 9). Special covenants must be inserted on the part of the lessee, according to § 2. Land may be appropriated for streets, roads, etc. (§ 3).

Mines. Mines (§ 6), water, water-courses, and other easements, may be leased in like manner for sixty years (§ 4).

Improved value. The Ecclesiastical Commissioners may, within three years from the date of such leases, direct that, on the next avoidance, all or part of the increased annual value thus obtained be applied in "making additional provisions for the cure of souls," by a scheme of which the patron is to have notice. Care is primarily to be paid to the wants of the district, and the incumbent is to *have left* to him, if his population amount to 2,000, not less than 600*l.* a-year; if 1,000, 500*l.*, and never less than 300*l.* (§§ 10—15).

In case of mining improvements,[1] the Commissioners may direct that not more than three-fourths, nor less than one-half, of the improved value shall be paid to them; and the remainder shall be deemed to be an improvement of the benefice (see §§ 13 & 14).

By the 21st & 22d Vict. c. 57, § 1, leases may be granted under the last-stated Act of lands, houses, mines, &c., in consideration of premiums paid down, or for such other considerations and upon such terms and with such provisions generally as the Commis-

[1] This sect. (14) of this Act, as to the payment of a portion of the improved value of mining leases to be granted thereafter by the rector, vicar, or incumbent, is repealed by the 21st & 22d Vict. c. 57, § 10, as to future leases.

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sioners may think proper in each case, and with the consents required by the said Act. And with the same consents, sales or exchanges and partitions may be effected; but no sale shall be effected by an incumbent unless three months' notice shall have been given to the bishop (and see § 10 as to the Commissioners' receipt and application of such portion of the improved income as they think fit, and repealing § 14 of the 5th and 6th Vict. c. 108). Sales, etc.

The clergy, *as such*, are prohibited from purchasing lands without a license in mortmain; but there are several relaxations under the Church Building Acts, and the New Parishes Acts, and other statutes. (See the 29th Car. II. c. 8; 1 & 2 Will. IV. c. 45; 1 & 2 Vict. c. 187; 3 & 4 Vict. cc. 60 & 113; 4 & 5 Vict. c. 37; 6 & 7 Vict. c. 37; 14 & 15 Vict. c. 97, § 8; 19 & 20 Vict. c. 104.) Purchase, etc.

By stat. 14 & 15 Vict. c. 104, any ecclesiastical corporation, sole or aggregate, with the consent of the Church Estate Commissioners, may sell to their lessees their reversion or interests in their lands under lease, and may enfranchise copyholds, the money arising therefrom to be laid out as directed by the Act; also monies to be invested for the benefit of such corporations may be laid out in the purchase of the interest of their lessees in leases before granted to them. All lands thus acquired shall be let only from year to year, or for a term in possession not exceeding fourteen years, except that, with the approval of the Church Estates Commissioners, mining or building leases of the same may be granted. Sales of Reversions.

Exchanges are permitted under and regulated by Exchanges.

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the 55th Geo. III. c. 147, § 1, with the consent of the patron and bishop. (See 6 Geo. IV. c. 8, and *supra*, "Sales," etc.) Exchanges may also be made, with the consent of the patron and ordinary, through the Tithe Commissioners (5 & 6 Vict. c. 54, §§ 5, 9), and this although no proceeding for commutation of tithes may be pending (9 & 10 Vict. c. 73, § 22).

Charges.

Incumbents are restrained from charging their benefices, or the tithes or other emoluments arising therefrom (13 Eliz. c. 20; 57 Geo. III. c. 99; 10 Barn. & Cres. 241), and a device to evade this Act, as a lease or agreement, is void (*ib.* 6 Exch. 1, and 24 L. T. Rep. 281); but under 17 Geo. III. c. 52, money may be borrowed to repair or rebuild parsonage-houses. (See Chap. XIV.)

Apportionment of Glebe, etc.

As to the apportionment of glebe, endowments, and charities, under the Church Building Acts and New Parishes Acts, see the chapter on the various Ecclesiastical Subdivisions of Parishes under these Acts (58 Geo. III. c. 45; 59 Geo. III. c. 134; 3 Geo. IV. c. 72, § 11; and 19 & 20 Vict. c. 104, §§ 25, 26, and 31, Appendix A). See also the case of In *re* North Wingfield Charity, in which lands given in trust for repair of a parish church were held to be not apportionable between the mother-parish and a district chapelry; but the surplus, if any, after the repair of the parish church, might be so applied (3 Law Times, N. S. 237).

Drainage and Improvement of Glebe.

This may be effected either (*a*) through the Court of Chancery, under the 8th & 9th Vict. c. 56; or (*b*), as is more usual, through the Inclosure Commissioners, under the 9th & 10th Vict. c. 107, and Acts extending or amending it.

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(*a*) By the 8th & 9th Vict. c. 56, incumbents, in common with other landowners, may petition the Court of Chancery for leave to make improvements, and to charge the expenses of so doing on the inheritance; and if the court think the improvements beneficial, the money, when expended, is charged on the inheritance, with interest at the rate agreed on, not exceeding 5 per cent., payable half-yearly, and the principal money is repaid by equal annual instalments, not less than twelve, nor more than eighteen, or, in the case of buildings, not less than fifteen, nor more than twenty-five.

(*b*) Under the General Drainage and Improvement Acts, (9 & 10 Vict. c. 101, 10 & 11 Vict. c. 11, 11 & 12 Vict. c. 119, 12 & 13 Vict. c. 100, and 13 & 14 Vict. c. 31), incumbents, with the consent of the bishop and patron, are enabled to execute works for the drainage, improvement, reclamation, etc., of glebe lands, and to erect permanent farm buildings, etc., thereon, or to enlarge and improve existing buildings, the expense being charged upon the living by way of rent-charge, at the rate of 6*l.* 10*s.* for every 100*l.*, by means of which the whole outlay and expense is defrayed in a period not exceeding twenty-two years.

The work, which is to be under the supervision of the Inclosure Commissioners, may be executed either by the incumbent himself, or through the agency of the Land Improvement Company or Land Loan and Enfranchisement Company, who (under their private Acts) will advance all the requisite funds, being repaid by rent-charge in twenty-two years, as above stated.

The money may also be advanced by private individuals (12 & 13 Vict. c. 100), or by the incumbent, who

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may in that case have the rent-charge secured upon his living, and so repay himself in case of his avoidance before the term of the rent-charge has expired.

Not more than 5,000*l.* is to be advanced to the same incumbent (13 & 14 Vict. c. 31, § 5), and the interest is in no case to exceed 5 per cent.

As to Charities, see further Chap. XVI.

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CHAPTER XIV.

Parsonages, Dilapidations, etc.

Any person or corporation, owners in fee, may give to the incumbent a house, garden, &c., where there is no parsonage, or none suitable (55 Geo. III. c. 147, § 5). When the glebe is less than, or does not exceed, five acres, the incumbent, with consent of the bishop and patron, may purchase not exceeding twenty acres for a parsonage or glebe, and may borrow for the purpose beyond what he may borrow under Gilbert's Act, not exceeding *two* years' net income for a term of twenty-five years (55 Geo. III. c. 147, §§ 6 & 7). The interest and 5*l.* per cent. of the principal to be paid yearly. Acquisition.

Under the 17th & 18th Vict. c. 84, § 2, the incumbent of any benefice entitled to glebe may, with the consent of the bishop and patron, annex it to any church or chapel within the parish or district, or place wherein such glebe is situate.

See *infra*, Queen Anne's Bounty, Chap. XV. § 3.

Under Gilbert's Act (17 Geo. III. c. 53, as amended by 1 & 2 Vict. c. 23; and 5 & 6 Vict. c. 26) money, not exceeding three years' net income[1] of the living, after deducting all outgoings except curate's salary, may,

[1] This is under the 1st & 2d Vict. c. 23, § 1. In the case of incumbents instituted *subsequent to August the 14th, 1838, four years' net income* may now be charged under the 1st & 2d Vict. c. 106, see *infra*.

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with consent of the bishop and patron, be raised from the Governors of Queen Anne's bounty, at interest not exceeding 4 per cent; or otherwise,[1] on mortgage of the benefice, at interest, or from colleges or corporations, being patrons of the living, *without interest*, for twenty-five or thirty-five years, in order to purchase a site and build a parsonage house, or to purchase, or to rebuild, or repair a parsonage house,[2] with necessary buildings in each case. One-thirtieth part of the principal to be repaid yearly, after the first year; the interest is paid half-yearly.[3]

Sale or Exchange.

A sale or exchange of parsonages, for others more convenient, with consent of bishop and patron, may also be made (35 Geo. III. c. 147; 1 Vict. c. 23, §§ 7, 8, & 9; and 5 & 6 Vict. c. 26); and by the Tithe Commissioners under 5 & 6 Vict. c. 84, § 2 (see p. 171); and

[1] Either to repair, rebuild, or add to the parsonage; and the incumbent himself may lend it (Boyd *v.* Barker, 28 Law Jo. Ch. 445).

[2] As to the incumbents instituted before the 14th August, 1838, three years' value only can be raised under the two earlier statutes.

[3] By the 28th & 29th Vict. c. 69, these powers are extended to the purchase of any land, not exceeding twelve acres, contiguous to, or desirable to be occupied with, the parsonage or glebe, or for building necessary offices, stables, or fences, or for restoring, rebuilding or repairing the chancel (where the incumbent is liable to do so), or for building, improving, enlarging, or purchasing any farm house, or farm buildings, or labourers' dwelling-houses belonging to, or desirable to be acquired for, any farm or lands appertaining to the benefice; and out of the money borrowed the *expenses* of architects, and of the requisite purchase and mortgage deeds and incidentals thereto, *may be defrayed*.

Persons under disability, corporations, trustees, officers of public departments, &c., &c., are by sec. 4 authorized to give or sell lands and houses for parsonages, or sites for parsonages, with outbuildings, &c.

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advowsons vested in inhabitants may be sold, and the proceeds invested in providing or repairing the house of residence (19 & 20 Vict. c. 50); but this does not extend to advowsons belonging to endowed charities (19 & 20 Vict. c. 50, § 1; and see Chap. XIII.).

Under § 27 of the 19th & 20th Vict. c. 104 (Lord Blandford's Act), *any* collegiate or corporate body, trustees, commissioners, or other persons managing any hospital, school, or charitable foundation, and any corporation aggregate or sole, and any other persons, may grant lands, messuages, &c., to the Ecclesiastical Commissioners, in order to provide a residence, or a site and glebe, for the incumbent of *any* church or chapel, subject to such stipulations and conditions as may be agreed.

Dilapidations.

The incumbent, whether rector, vicar, or (Mason *v.* Lambert, 12 Q. B. 795) perpetual curate, is bound by statute and by common law, and the bishop may compel him (1 & 2 Vict. c. 106, § 41), to keep the parsonage in repair (see Sequestration, Chap. XVIII., sec. 6); and to *restore* it if necessary,[1] without addition,[2] improvement, or ornament (Wise *v.* Metcalfe, 10 Barn. & Cres. 299); and if he pull it down, or allow it to decay, he, and his representatives after his decease, are liable either in the Ecclesiastical or Civil Courts; but debts of the deceased must be paid before dilapidations[3] (Bryan *v.* Clay, 1 El. & Bl. 38). He is not under any

[1] The incumbent must insure against fire, in a sum agreed with the patron and ordinary.

[2] The parsonage may be enlarged, if small and mean (Boyd *v.* Barker, 28 Law J. Ch. 445).

[3] *i.e.*, At law, but *pari passu* with other debts in Equity (2 Jur. 1221, N. S.) out of equitable assets (23 Beav. 278).

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particular liability as to the mode of cultivating the glebe (Cripps, 286), although he is liable for the repair of the hedges, fences, &c., even to *new* glebe lands, whether put up by himself or his predecessors. (See 2 Ad. & Ell. 781, and the cases quoted *infra* as to fixtures.) It would, however, seem that he is not liable for mere permissive waste (31 L. J. N. S. C. p. 290). He must not fell timber for any purpose unless for the repairs of the parsonage or the chancel, or any wood unless for necessary fuel (Prid. Chwdns. 407), or the repair of gates, stiles, or fences.

The new incumbent, as soon as he is inducted, should have an estimate of dilapidations by *two* competent valuers, and make an early claim. A delay (for three or four years, for instance) might be very prejudicial; it greatly increases the difficulty of proof, and he will be responsible to his successor for the dilapidations of his *predecessor;* moreover, deduction will be made for the decays which may be reasonably supposed to have happened during such period of delay.

All sums received for dilapidations are, within two years, to be laid out on the premises, under pain of forfeiting double the amount (14 Eliz. c. 11, § 18), and if the incumbent who receives such sums die within the two years, the money is to be paid to the successor (Gibs. Cod. 754). If a living be under sequestration, the profits in the hands of the sequestrators are liable for dilapidations (Cripps, 632).

Repairs. Bishops and archdeacons may compel proper repairs during the life of the incumbent, and may punish by deprivation for neglect (Degge, pt. 1. ch. ix.; see 3 Steph. Blackst. p. 66, 4th ed.).

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Under the 1st & 2d Vict. c. 106, every bishop is, on or after avoidance by commission, to inquire if there be a fit house; and, if the income exceed 100*l.* a-year, to cause one to be provided by mortgage of the living, for a period of 35 years, to an amount not exceeding four years' net income, on terms in other respects similar to those of Gilbert's Act, or to report his reason for not doing so. This commission, however, in practice is not issued where the bishop conceives that there is a proper residence (Cripps, 298). Compulsory Providing of.

By sec. 70 of this Act, where new buildings are necessary for the residence of an incumbent, and cannot be conveniently erected on the glebe, the bishop may purchase any conveniently situated house, and for this purpose four years' net income may be charged upon the benefice. It is to be observed that the provisions of this Act are inapplicable until there has been an avoidance; and consequently, in the case of incumbents instituted before Aug. 14th, 1838, the amount to be taken up at interest will be three, and not four years' net income, and the proceedings will be regulated by Gilbert's Act and the other Acts amending it.

The incumbent's widow may continue in the parsonage for two calendar months from his death (1 & 2 Vict. c. 106, § 36). Widow's right to remain.

An incumbent may let his glebe, house, garden, and offices to any other than his curate, provided that in letting the same there be made an agreement in writing, containing a condition for avoiding the same, upon a copy of the bishop's order for the incumbent to reside, or his assignment of the house as a residence for a curate, being served upon the occupier. Any other Letting of Glebe Houses.

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letting will be null and void (1 & 2 Vict. c. 106, § 59). The incumbent is not liable to penalty for non-residence while the tenant occupies (§ 60).

Fixtures.

It may be shortly laid down, that many, nay, most erections, fittings, additions, &c., which in the case of ordinary tenants would be removable as between them and the landlord,[1] are not so removable as against the incoming or succeeding incumbent. They are generally, *prima facie*, deemed to have been added permanently to the freehold; the incumbent being *pro tem.* in possession of the freehold. However, the outgoing incumbent, or his representatives, may be compelled by the successor to pull down and remove all additions even of a substantial character, which would tend to encumber the living; and to reinstate the premises (see the case of Martin *v.* Roe, 28 Law Times, 283; 3 Jur. N.S. 465); and, on default, the expense of so doing would be recoverable as dilapidations. Hothouses, pineries, conservatories, aviaries, observatories, a large library, and similar additions, of luxury and not of necessity, are liable to be so dealt with, and would, therefore, be held to be the property of the outgoing incumbent. In short, the parsonage fixtures and glebe are to be transmitted by the predecessor "of

[1] Thus stoves put in by a tenant belong to him and his personal representatives, as personal property; but if put in by the freeholder, they go with the freehold as part of it, and not to the personal representatives of the freeholder, as ordinary chattels. In the case of incumbents, stoves, &c., would belong to the outgoer, perhaps, if they were valued to him or put in by him; but not if put in instead of other stoves not *purchased* by him from his predecessor. The law, however, is vague upon the subject, and the better doctrine seems to be that in the text. Probably it would be held that all fixtures of real domestic utility must be left for the successor.

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such *convenience and character as he found them*, in good condition and properly repaired, and even rebuilt and reinstated, if by his neglect they have become damaged."

Apportionment of Rents, Growing Crops, etc.

As between an outgoing and the incoming incumbent, all rents, rent-charges, dividends, moduses, compositions, and other fixed payments (4 & 5 Will. IV. c. 22) and annual charges upon the living under Gilbert's Act or other Acts (1 & 2 Vict. c. 106, § 68), are apportioned, so that the outgoing incumbent, or his representatives if deceased, are entitled to a proportion of the rents, and liable to a proportion of the charge according to the time elapsed since the last period for payment, up to and including the day of avoidance or death. Crops growing at the avoidance belong to the outgoing incumbent (28 Hen. VIII. c. 11). But see the 14th & 15th Vict. c. 25, § 1, by which it is provided that, on the determination of leases or tenancies under a tenant for life, or for any other uncertain interest, by the death or cesser of the interest of the landlord, the tenant, instead of having emblements, is to hold until the expiration of the current year.

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CHAPTER XV.

Tithes, Offerings, Augmentations.

Section 1.—*Tithes.*

What.

Tithes are (Blackstone) a tenth part of the increase, yearly arising and renewing from the (*a*) profits of lands, (*b*) the stock upon lands, and (*c*) the personal industry of the inhabitants: the first (called prædial) of corn, grass, wood, and fruit; the second (mixed), wool, mills, lambs, pigs, etc.; third (personal), of trade, occupations, fisheries, and the like; of which last, only a tenth part of the clear profit is due. The great tithes, as of corn and hay, are generally payable to the rector or parson, the small tithes to the vicar.

Payable only on annual increase.

Generally speaking, tithes are payable on everything that yields an *annual increase*, but not for that which is of the substance of the earth, as of mines, minerals, and the like, nor for deer and animals whose increase, so as to profit the owner, is but casual. Tithe is payable for the pasturing of cattle, for gardens, orchards, and nursery-grounds, if the produce is sold; but hothouse fruit, it seems, is not titheable, nor timber, except when cut down and used as firewood or made into charcoal. Fish taken in the sea or open river are not titheable; if taken in a pond or enclosed water,

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they *are* liable. Pigeons, honey, and beeswax are titheable; and deer and rabbits, though wild by nature, by special custom; but not chickens, if tithe has been paid for the eggs. The tithe of milk is the milk yielded every tenth day. Barren ground becomes liable if converted into pasture or meadow land after seven years from the first attempt to make it productive. Ordinary headlands do not pay tithes, unless grain be grown upon them. Corn-mills are liable for the tenth of their profits if built since 1315; but the more ancient mills become liable for tithe for any *increased* power (Steph. Blackstone, 4th ed.).

Of Extra-parochial Lands.

The tithes of all *extra-parochial* lands belong to the Queen (Attorney-General *v.* Lord Eardley, 8 Price, 39). Day-labourers and servants in husbandry are not liable to personal tithes.

Vicar and Rector not liable to each other.

A vicar is not liable to tithes to his rector, nor a rector to his vicar; but the exemption is only valid while the lands are in the hands of the ecclesiastical owner (Cripps, p. 333; Lagden *v.* Hack, 2 Hagg. Cons. Rep. 308).

Abbey Lands.

Persons holding the lands of any abbey dissolved by the 31st Hen. VIII. c. 13, are as free from tithes as the abbeys themselves formerly were; and thus lands, formerly abbey lands, now claim to be tithe-free. But this exemption does not extend to the lesser monasteries, whose landed income did not exceed 200*l.* per annum, and which were dissolved by the 27th Hen. VIII. c. 20.

Exemption from Tithe.

Lands may be exempt from tithe either by composition, or by custom, or prescription. Composition is when an agreement is made between the owner of

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the land and the parson or vicar, with consent of the ordinary and patron, that such land shall be discharged in consideration of land, money, or other equivalent given to the parson in lieu thereof; but, by the 13th Eliz. c. 10, compositions were not binding on the succeeding incumbent.

Prescription. A discharge by custom or prescription is either entire or partial, *i.e.*, either by a *modus de non decimando* or a *modus decimandi*.

As against Laymen. By the 2d & 3d Will. IV. c. 100 (amended by 5th Will. IV. c. 83), any exemption from tithe due to any layman is valid on proof thereof for thirty years, unless payment of tithe is shown to have taken place prior to such thirty years, or that such exemption was made by agreement, or if such proof extend to sixty years it is deemed absolute and indefeasible, unless enjoyed by written agreement.

As against Ecclesiastics. In case of tithe due to an ecclesiastical corporation sole the exemption must have continued during two successive incumbencies, and for not less than three years after the institution of a third; and if this be less than sixty years, then it must be continued up to the sixty years and such three additional years, unless enjoyed by written agreement.

Spiritual persons and corporations may claim exemption by (*a*) composition real; (*b*) the pope's bull of exemption; (*c*) unity of possession—as if the rectory and lands in it both belonged to a religious house; (*d*) prescription, as having always been in spiritual hands (Steph. Blackst. vol. iii. p. 84).

Recovery of Tithes. The Ecclesiastical Courts cannot try the right to tithes, unless between the clergy themselves, and can

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only compel the payment when the right is not disputed; so that if the defendant plead any custom, modus, or composition, or if other matter involving the right of tithing is pleaded, the ecclesiastical right is ousted.

Abstraction of Tithe.

By 2 & 3 Edw. VI. c. 13, if any person carry off the great tithe of corn, hay, and the like, before the tenth part is duly set forth, or agreement made with the proprietor, or if he hinder the proprietor or his deputy from viewing and carrying away his tithe, double the value of the tithe may be recovered from him in the Ecclesiastical Court, and treble the value in the temporal courts. A more summary method exists by 7 & 8 Will. III. c. 6, for the recovery of small tithes under the value of 40*s.*; which enacts that, on refusal to pay twenty days after demand, the clergyman may complain to two justices, who summon the party, determine the complaint, and give reasonable allowance for the tithe, and costs not exceeding 20*s.* Persons claiming an exemption may give security to pay the costs and try the question. If a *Quaker* refuse to pay or compound, two justices may summon him, and ascertain what is due, and direct payment, so that the sum ordered does not exceed 50*l.*; and upon refusal may levy the money. Oblations and compositions of 10*l.* may be in like manner recovered (7 & 8 Will. III. c. 34; 53 Geo. III. c. 127; 54 Geo. III. c. 68).

Small Tithes.

Quakers.

In London

The tithes of the London clergy are a rent-charge on the houses liable, even if empty; and are leviable on the goods of the succeeding occupier.

The incumbents of the fifty-one churches in the

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City injured by the great fire have a fixed annual sum, being an equal pound-rate on the parishioners, regulated by the 44th Geo. III. c. 89.

The other London clergy in the City are entitled to 2*s.* 9*d.* in the pound on the improved annual rental, under the decree made pursuant to the 37th Hen. VIII. c. 12.

Commutation.

Tithe commutation under the Act 6 & 7 Will. IV. c. 71, and the various Acts amending, may be effected through the Tithe Commissioners, either by a voluntary parochial agreement, if with the consent of the patron and Commissioners, or by the compulsory award of the Commissioners, who are in this case to take as the basis of the commutation (but with power to vary it in certain cases) the clear average value for seven years, ending Christmas, 1835, of the tithes of the parish, or of the composition, if any, payable for the same. The value so agreed or compulsorily awarded (as the case may be) will be the total rent-charge in lieu of tithes in that parish, and is afterwards apportioned among the several lands of the parish, according to their average titheable produce. The apportioned rent-charge is payable by two half-yearly payments, fluctuating according to the price of corn, as advertised in the "London Gazette." The *land* only of the party charged is liable. The remedy where the rent-charge is in arrear for twenty-one days, is only by distress on the land; but if it be in arrear for forty days, and there be no sufficient distress, a writ may be issued, followed by an execution, for taking possession of the lands till the debts and costs be satisfied. But only two years' arrears can be re-

Rent-charge.

Payable half-yearly.

Remedy for.

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covered at any one time. The rent-charge is subject to all incumbrances, and to all rates and charges to which the tithes were subject; *i.e.*, poor-rate, highway rate, etc.; but not to church-rates (Cripps, 355-6; and see cases quoted at pages 97 and 98); and rates and charges are to be assessed in the first instance upon the occupier, who may deduct the amount from his next payment of rent, and the landlord may recover from the owner of the rent-charge (§§ 71 and 79). Land to the extent of twenty acres in the same parish may be given to the tithe-owner in exchange for the tithes or the rent-charge (§ 29). The rent-charge is affected by the same interests, liabilities, and rights of exemption as the tithes commuted (§ 71), and may be sold, exchanged, or applied accordingly.

Land may be given in exchange for.

The Acts provide for the settlement of questions as to any composition, real, modus, or exemption from tithe. A commutation may be effected voluntarily (under § 21 of the Act) by agreement between the tithe-owners and at least two-thirds of the landowners, with the consent of the bishop and patron (§ 26), and must be confirmed by the Commissioners (§ 27). As to the apportionment of the rent-charge so arranged, see § 32.

Settlement of questions as to.

At any time before this confirmation by the Commissioners of an apportionment after a compulsory award, the land and tithe-owners may by agreement, as in the case of tithes, commute the *Easter-offerings*, mortuaries, and surplice-fees (2 & 3 Vict. c. 62, §§ 8, 9).

Commutation of Easter-offerings.

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Section 2.—*Easter-offerings, Surplice-fees, Mortuaries, etc.*

Definition.

These are due by custom only, and not of common right, unless, perhaps, Easter-offerings (3 Steph. Black. p. 106, 4th ed.). Twopence a-head for every person sixteen years of age or upwards is the usual Easter-offering, but a special custom may be proved for a larger or less sum. To prove the custom, search should be made for terriers in the Diocesan Registry. In Reg. *v.* Hall, 35 L. J. N. S. Q. B. p. 251, the following terriers, dated 1725, 1743, etc., to 1825, produced from the Registry of the Archbishop of York, were held to prove a custom; viz., "Easter-offerings. Every communicant, 2*d.*; every cow, 2*d.*; every plough, 2*d.*; every foal, 1*s.*; every hive of bees, 1*d.*; every house, 3½*d.*" The word communicant was held to apply to the first item only, and in the absence of any evidence to give it a wider meaning to be confined to those who actually communicated.

How recoverable.

If the custom is clear, oblations and Easter-offerings are recoverable in the Spiritual Courts; and if under 10*l.*, then under the 7th & 8th Will. III. c. 6, and 53d Geo. III. c. 127, they can be recovered by complaint, *in writing*, to two justices. And by the same statute, and the 5th & 6th Geo. IV. c. 74, and 4th & 6th Vict. c. 36, this is the only remedy, where no question of title arises.

Surplice-fees.

Surplice-fees are fees payable on baptisms, burials, marriages, and churchings, as to which we have already spoken. (See "Offices of the Church," and Appendix B.) As to the respective rights of the incumbents of mother-

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parishes and districts, see Vaughan *v.* Metropolitan Cemetery, 7 Jur. N. S. p. 159; and Tuckness *v.* Alexander, 32 L. J. Ch. p. 794. We may here, however, add, that where the incumbent of an original parish improperly marries, etc., the parishioners of a new parish, and takes the fees, it is not yet decided whether the incumbent of the latter parish can recover them at law; it is conceived that he can (Aulton *v.* Roberts, 26 Law J. Exch. 380; King *v.* Alston, 12 Q. B. 97). He can also proceed in the Spiritual Courts (Spry *v.* Gallop, 16 M. & W. 716), or under the Church Discipline Act, or by Bill in Chancery.[1] If the duty is performed in a chapel of ease, the incumbent of the parish is entitled to the fees (6 M. & W. 639; 5 Exch. 69).

Commissioners may fix.

By the 59th Geo. III. c. 134, § 11 (which recites 58 Geo. III. c. 45), the Commissioners are empowered "to make and fix any table of fees for any parish, with the consent of the vestry or select vestry, or persons exercising powers of vestry, in such parish, and also to make and fix any such table of fees for any extra-parochial place, or in or for any district chapelry or parochial chapelry, in which any church or chapel shall be built and appropriated under the provisions of the recited Act, or that Act, with the consent nevertheless in all such cases of the bishop of the diocese." In new parishes, the chancellor of the diocese fixes the scale.

By the 14th & 15th Vict. c. 97, § 6, where the fees or any part of the fees, for any of the Offices of the

[1] A proceeding which is now sufficiently prompt and inexpensive, especially where a friendly suit is resorted to, or the parties are not unnecessarily hostile.

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Church are *not* reserved, or do not otherwise belong to the incumbent of the parish or district out of which any district chapelry, consolidated chapelry, or particular district is taken, all mortuaries and other ecclesiastical fees, oblations, and offerings arising within the latter, are, after the passing of that Act (7 August, 1851), to belong to their incumbent, although no compensation shall have been made to the incumbent of the original parish or district.

And by the 19th & 20th Vict. c. 104, § 12, where such fees *have been* reserved or belong to the incumbent of the mother-parish or district, then, after his next avoidance or his relinquishment of the fees, which may be in writing or by parol only (Gough *v.* Jones, 12 L. T. N. S. 33), such reservation is to cease, and the fees are to belong to the incumbent of the district within which they arise.

The clerks' fees also pass over on his vacating his situation, or having a compensation in lieu of fees awarded him by the bishop (*ib.*).

By the 11th section of the same Act, the incumbent of any church having a district may obtain an order from the Commissioners enabling him to perform all or any of the Offices of the Church, and then the fees will pass to him on the avoidance of, or relinquishment of the fees by, the incumbent of the mother-parish under section 12.

Mortuaries.

These (says Blackstone) are a sort of ecclesiastical heriot, a customary gift claimed by the minister on the death of his parishioners. Originally they were purely voluntary, but custom established them in many places; and these customs so varied that, by 21st Hen.

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VIII. c. 6 (unless less or more is claimable by custom), the fee is limited as follows:—3*s.* 4*d.* where the goods left by the deceased (not being a beneficed clergyman, married woman, nor under age) are worth 30*l.* or under, after debts paid; 6*s.* 8*d.* above 30*l.* and under 40*l.*; and 10*s.* if above. And thus the law stands (3 Steph. Black. p. 110).

They are recoverable in the Ecclesiastical Courts; but, if the custom for their payment be denied, that question must be tried in the Courts of Common Law.

As to commutation of Easter-offerings, mortuaries, &c., see preceding section. Commutation.

Section 3.—*First-fruits, Tenths, and Augmentations.*

These are profits of any spiritual preferment, which were payable to the Crown after avoidance, for the first year, according to the *valor beneficiorum* of Hen. VIII. and Eliz. in the King's books. They are payable directly upon the avoidance (28 Hen. VIII. c. 11). First-fruits.

If the incumbent of a living chargeable with first-fruits lives but half a year in it, he pays one quarter only of his first-fruits; if but one year, then half of them; if but a year and a-half, three-quarters of them; and if two years, then the whole (1 Eliz. c. 4, §§ 30—33).

These were also a payment to the Crown of the tenth part of the annual value of the living, according to the same valuation. Benefices with cure of souls under the clear annual value at that time of 50*l.* were exempt from first-fruits and tenths by the 5th Anne, c. 24, § 1, except where they had been granted away be- Tenths.

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fore the Act (§ 3). No tenths are payable for the first year (27 Hen. VIII. c. 8). Tenths are due annually at Christmas.

Queen Anne's Bounty.

By the statute of 2nd Anne, c. 11, the first-fruits and tenths are vested in trustees for the augmentation of poor livings. The rules of distribution are as follows :—(*a*) 200*l.* is allowed for each augmentation, to be laid out in purchasing land (at the expense of the trustees), to be annexed to the living ; (*b*) this is to be made first to all livings not exceeding 10*l.* a-year, then to all not above 20*l.*, and so on, whilst any remain under 50*l.*[1]

If any private benefactor advances 200*l.* or more, the trustees will advance another 200*l.* to augment any living not above 45*l.* a-year, and preference is given to the highest benefactor ; where equal, the poorer living is preferred. *Cæteris paribus*, the first offer is preferred.

By the 1st Geo. I. c. 10, § 1, the bishops are to report to the trustees as to the annual value of the benefices within their several dioceses.

Parsonages may be built.

The augmentation may be applied in building, rebuilding, or purchasing a parsonage (43 Geo. III. c. 147, § 3, and §§ 28 & 29 Vict. c. 69, *supra*, Chap. XIV.), and may be made upon conditions as to allowance of a stipend by the patron, &c., to the minister of the living (1 Geo. IV. c. 10, § 16).

Patronage given to the Benefactors.

The right of patronage may be changed upon an augmentation, and vested in the benefactors (1 Geo. I.

[1] The Corporation of Queen Anne's Bounty are empowered to accept grants of property, goods, or land, other than the first-fruits and tenths.

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c. 10, § 8), even where under legal disability, *i.e.*, by their guardians, trustees, &c.

Augmented Livings become Perpetual Curacies.

All benefices augmented by this fund become perpetual curacies, and cease to be donatives; but the donatives are not augmented without the consent of the patron (*ib.* §§ 4, 14, 15).

Section 4.—*Other Augmentations.*

Augmentation of poor Vicarages and Curacies.

Under the 27th & 29th Charles II. c. 8, and the 1st & 2d Will. IV. c. 45, bishops, deans and chapters, ecclesiastical corporations and persons, may augment the incomes of *poor vicarages and curacies*, by reservations out of impropriate rectories and tithes, whether commuted or not, belonging to them, in the form of an annual rent (§ 5 of the Act of Will. IV.). Moreover ecclesiastical corporations and persons, colleges, &c., may annex impropriate rectories and tithes to *churches or chapels within the parish* in which the rectories or tithes arise (13 & 14 Vict. c. 95), but in the case of bishops and chapters the consent of the Ecclesiastical Commissioners is necessary (2 & 3 Vict. c. 113, § 10).

Annexation of Tithes by Rectors and Vicars.

Rectors and vicars also, with the consent of the ordinary and patron, may annex tithes *not within* the limits of their benefices to *churches or chapels* being benefices within the parishes in which the tithes arise (1 & 2 Will. IV. c. 45, § 20); and as to their selling tithes, see 28th Vict. c. 42, Appendix A.

Grants of Lands for augmentation.

Under the 43d Geo. III. c. 108, §§ 1—8, and the 51st Geo. III. c. 115, amending the same, §§ 1 and 2, the Crown, and any person not being under age, or insane, or a married woman, may, by deed enrolled, or

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by will, as therein mentioned, grant to any person or corporation their interest in lands not exceeding five acres, or in goods not exceeding 500*l.*, to erect, rebuild, repair, or purchase a church or chapel, residence, churchyard, or glebe, to be applied accordingly with the consent of the ordinary; but only one gift could be made by one person (and see 55 Geo. III. c. 147, §§ 6—18, and 56 Geo. III. c. 141).[1]

Grant of Land already in Mortmain.

Plots of land held in mortmain, lying convenient to be annexed to or employed as the site of some church or *chapel*, or house of residence, may be granted by the corporation holding the same, either by way of exchange or as a benefaction, and the grantees may take the same, with the consent of the incumbent, patron, and ordinary. Furthermore, any person or corporation, seised in fee of any manor, may grant not exceeding five acres of the waste in a parish, to erect or enlarge a church or chapel, consecrated or to be consecrated in such parish, or providing it with or enlarging burial-ground, or for a glebe or residence. A bequest of money for the endowment of churches and chapels is good (Edwards *v.* Hall, 254 L. J. N. S. p. 82, Ch.); but a bequest to build and endow a church or chapel is void under the statutes of mortmain (6 Vesey, 404; 3 Russ. 456; 12 L. J. N. S. p. 381, Ch.), as

Bequests to Build and Endow.

[1] Under the 43d Geo. III. c. 108, and the 4th & 5th Vict. c. 38, land may be given for a church and schools without distinguishing which part is for each, and although a benefit be reserved to the donor (Fisher *v.* Brierly, 29 Law Journal, Ch. p. 477, on Appeal). The Acts referred to in this paragraph deserve far more consideration than they have heretofore received; they preceded the Church Building Acts, and still afford a constitutional and independent mode of church extension.

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it necessarily includes a direction to purchase land, although a bequest to the Incorporated Society for Promoting the Building, &c., of Churches, having no power to purchase lands, is good (17 Jur. N. S. p. 217). When the land is already in mortmain, bequests for building or rebuilding churches are good (6 Vesey, 186; 4 Russ. 342; 21 Beav. 134; 37 L. T. N. S. Ch. p. 521). (See 43 Geo. III. c. 108; 51 Geo. III. c. 115, and 52 Geo. III. c. 161, § 27.)

Grants under the New Parishes Acts.

Under the 6th & 7th Vict. c. 37, § 22, as amended by the 19th & 20th Vict. c. 104, § 4 (Appendix A.), any person or any corporation, whether ecclesiastical or collegiate, aggregate or sole, may, but as to incumbents only with the patron's consent, by deed enrolled (27 Hen. VIII. c. 16), as to lands, but as to "goods and chattels" (which words comprehend *all personal estate whatsoever*) (7 & 8 Vict. c. 94, § 7), without deed, or by will, give and grant to the Ecclesiastical Commissioners all their interest in lands, tithes, or other hereditaments or personal estate, for the endowment or augmentation of the stipend of the minister of districts and parishes formed under the New Parishes Acts, or for or towards providing any church or chapel for the purposes and subject to the provisions of those Acts.

And by section 27 of the 19th & 20th Vict. c. 104, any such person or corporation, including trustees of any charitable foundation, may give any lands, messuages, &c., to the Ecclesiastical Commissioners, in order to provide for the incumbent of any church or chapel a convenient residence, or a site for the same. The freehold of all such lands vests in the incumbent. (See § 10.)

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Under District Church Tithes Act.

And now, by the 28th Vict. c. 42 (Appendix A.), further facilities are afforded for the annexation of tithes to district and new parish churches.

By Private Persons under Patronage Act.

Private persons may build and endow churches and chapels, and have the patronage vested in them, under the 1st & 2d Will. IV. c. 38, §§ 1 and 2; the 1st & 2d Vict. c. 107, §§ 3 and 4; the 3d & 4th Vict. c. 60, § 12; and 14th & 15th Vict. c. 97, §§ 7 and 11; notice being given to the patron and incumbent of the parish, and the consent of the bishop obtained; the patron having the right, upon such notice, himself to build and endow such church; 40*l.* a-year from land, or 1,000*l.* invested, is the endowment required (and see page 36).

Title of Lands granted not to be questioned.

By the 3d Geo. IV. c. 72, § 29, the title to sites granted or sold for *any* parish or place is not to be questioned after five years (and see 1 & 2 Will. IV. c. 38, § 17, as to the payment of the value of such land).

The necessary information, and forms for application, may be obtained at the Office of Queen Anne's Bounty, Dean's Yard, Westminster, or of the Ecclesiastical Commissioners, Whitehall-place. (See the 17th and 18th Vict. c. 84, "the Benefices Augmentation Act.")

Upon the whole subjects of this chapter, see further Cripps' Laws of the Clergy, pp. 260—286.

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CHAPTER XVI.

AS TO PAROCHIAL AND OTHER CHARITIES.

Duty of Churchwardens as to.

It may be shortly stated, that the churchwardens should see that the parochial charities are rightly appropriated (Articles of Visitation; Sparrow, pp. 31—37).

Charitable Trusts Acts.

Under the Charitable Trusts Acts[1] (18 & 19 Vict. c. 124, § 44), the trustees of every charity within the operation of the Act (as to which, see §§ 62 & 66 of the 16th & 17th Vict. c. 137, and the 48th section of the Act of 1855, Appendix D.) are yearly, on or before the 25th of March, to send an account of the receipts and payments, balances due, &c., on account of every "parochial charity," to the churchwardens of the parishes "with which the objects of the charity are identified," who are to present the same to the next General Vestry.

Yearly Account to be rendered.

Clergyman *ex officio* a Trustee.

In most parochial charities the incumbent will find that, by the original grant, or by custom, he is, *ex officio*, a trustee; and if not, still his right to become so is almost invariably recognised.

At all meetings of trustees of charities, of which he is one, and at all meetings of committees of parochial charities generally, whether endowed or not, the privilege of

[1] These Acts are given *in extenso*, with notes, in Appendix D.

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the incumbent to be present and preside, as a matter of invariable courtesy and custom, if not of right, is, it is believed, never disputed (and see "Vestry" and "Church-rates," and cases there).

By § 16 of the Act of 1860 (Appendix D.), a majority of two-thirds of the trustees assembled at a meeting can act for and bind the whole body.

Apportionment of Charities by the Court of Chancery.

Under the 8th & 9th Vict. c. 70, § 22, the Court of Chancery (besides its general jurisdiction in cases of charities) can apportion charities and debts charged upon the church-rates between the remaining part of the ancient parish and any "separate and distinct" or "district parish or chapelry" taken therefrom, by a summary, inexpensive, and very effective process; viz., on the petition of any two residents (see also 3 Geo. IV. c. 72, § 11; and as to the apportionment of charities by the Ecclesiastical Commissioners, see p. 171).

By the Charity Commissioners.

Under the 18th & 19th Vict. c. 124, § 10 (Appendix D.), the Charity Commissioners also, where a parish or district entitled to the benefit of a *charity* has been subdivided, and the gross income does not exceed 30*l.*, may apportion it between the several divisions.

This Act, and the 16th & 17th Vict. c. 137, and following Acts in the Appendix, should be consulted generally in all matters relating to charities. The Commissioners' powers are large, and may be beneficially and economically exercised in most cases. Indeed, very little can be done in connexion with any endowed charity without obtaining their sanction.

Advice and Direction may be ob-

From these Acts it will be seen, that whenever it is desired "to obtain any relief, order, or direction con-

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cerning any charity, or its estate, funds, property, or income," application by notice, &c., according to § 17 of the 16th & 17th Vict. c. 137 (Appendix D.), should be made to the Charity Commissioners, whether the income of the charity do or do not exceed 30*l.* a-year; and they, upon a statement of the facts, &c., will, if they think right, grant a certificate authorizing or requiring proceedings to be taken thereupon. Under § 28 of the same Act, (*a*) if the income exceeds 30*l.* a-year, or the charity is in the City of London, application is made to one of the Equity Judges *in chambers* (a very simple, prompt, and inexpensive procedure), who makes such order in the matter as the case may require. If, however, (*b*) the income does *not* exceed 30*l.* a-year, or the charity is not in the City of London, application is made under § 32 of the same Act to the Court of Bankruptcy in the County Court in whose district the charity is, but the order must, in certain cases (§ 36), be confirmed by the Commissioners.

Certificate from the Commissioners.

If it is merely desired to obtain the "appointment or removal of a trustee," no previous certificate, under § 17, seems to be necessary.

Appointment and Removal of Trustees.

The Attorney-General can act without any certificate from the Commissioners (see §§ 18 & 28).

The cases, in addition to cases of apportionment, in which the assistance of the Court of Chancery or the Charity Commissioners is likely to be required, are where trustees are charged with misappropriation or malversation; where strangers misappropriate the charity funds; where the appointment or removal of trustees or other officers is desired; where trustees seek advice or direction, or where the transfer or vesting of

Cases of Misappropriation, New Schemes, etc.

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charity property is needed, or a new scheme is required. In all such cases, the Court of Chancery retains its jurisdiction; but, by the Act of 1860, §§ 2 & 4 (Appendix D.), the Commissioners are empowered to make orders upon any of these subjects, where the gross income does not exceed 50*l*. Resort to the Court of Chancery can only be taken with the sanction of the Commissioners or of the Attorney-General, though the former have powers of inquiry; while as to the smaller charities, the Commissioners have virtually powers of direction, and persons acting under this advice are indemnified (§ 16 of Act of 1853). The Commissioners cause inquiries into charities by themselves or by the inspectors, and can require all persons concerned in the management of charities to render accounts and answer inquiries. The inspectors are empowered to require the attendance of persons before them. They examine such persons, and demand documents in their custody relating to charities, unless they claim to hold the property free from any charitable trust, or adversely to any charity.

Inspectors of Charities.

No Proceedings without Consent of Commissioners.

As already explained, no proceedings can be instituted relative to any charity in the Court of Chancery without the consent of the Commissioners (except by the Attorney-General); and the Commissioners may, on the report of any inspector, direct any suit to be instituted, or certify cases to the Attorney-General. They may compromise claims on behalf of or against a charity, and (provided that, in a suit instituted under the Act, the Court consent) may determine any question of title as between the charity and a person claiming adversely, or as to the existence or extent of

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a trust. The Acts apply to "all institutions endowed for charitable purposes" (§ 48, Act of 1855), unless expressly exempted.

Commissioners may frame New Schemes.

The Commissioners may frame new schemes of management, and vary the trusts, even where it is doubtful whether the scheme can be carried out without the authority of Parliament (§ 54 of Act of 1853).

May remove Officers.

They have also power to authorize the removal of masters, mistresses, and other officers (§ 22), or the sale or exchange of charity lands, and redemption of rent-charges (§ 24), and by § 14 of the Act of 1860, every master or mistress appointed after the 28th August, 1860, may be removed after reasonable notice by the trustees or managers; and by § 13, magistrates may give possession of premises withheld by any master, mistress, or other officer, or any recipient of the benefit, of any charity.

Applications to the Court of Chancery under the Act can be made by the Attorney-General, or the trustees or persons administering, or claiming to administer, the charity, or any of them, or by any inhabitants of the place within which it ought to be administered. The secretary is created "official trustee of charity lands," with perpetual succession, for the purpose of holding and conveying property where the Court shall think it desirable, where there are no trustees to act; but he is a bare trustee only, and is to permit the acting trustee to have the management of the property (§§ 47 and 48 of Act of 1853; and § 15 of Act of 1855); but they are to furnish accounts of receipts, expenditures, &c. (§ 61, 1853, and § 44, 1855). The Act does not apply to trusts for, or places of,

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religious worship, or to the universities, or to friendly societies, or societies wholly maintained by voluntary contributions, or to Roman Catholic charities; and when charities are partly endowed only, then it extends only to the endowments (§ 62, Act of 1853).

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CHAPTER XVII.

Schools.

Section 1.—*Sites.*

Under 4 & 5 Vict. c. 38 (amended by the 7th & 8th Vict. c. 37, the 12th & 13th Vict. c. 49, the 13th & 14th Vict. c. 28, and the 14th & 15th Vict. c. 24), owners (legal or equitable), whether in fee, fee-tail, or for life, *in possession*, and incumbents, with the consent of the bishop, and in some cases of the patron also, may give, sell, or exchange land, not exceeding *one acre*, as a site or sites for a school or schools for the education of poor persons, and residence.[1] The Chancellors and Councils of the Duchies of Cornwall and Lancaster may make grants for similar purposes, as also may corporations, trustees, and persons under disability. Any number of sites may be granted *in different parishes*, though together exceeding one acre, provided the aggregate quantity of land granted in *any one parish* does not exceed *one acre*. By 14 & 15 Vict. c. 24, in the case of parishes divided into ecclesiastical districts, the word parish is to signify each such district. The provisions of the Acts are extended by 15 & 16 Vict. c. 43, to

Acquisition of Sites.

Power to give, etc.

[1] If the person next in succession be competent to join (*but not otherwise*), his concurrence is to be obtained.

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schools or colleges for yeomen, or tradesmen, or others training for holy orders.[1]

Conveyance of.

The site may be conveyed to the incumbent and churchwardens and overseers of the parish, and their successors in office, or to any other corporation, sole or aggregate. (See also the 13th & 14th Vict. c. 28; and as to sites appropriated upon inclosures, see 8 & 9 Vict. c. 118, § 34; and 20 & 21 Vict. c. 31, § 13).[2] By the 31st & 32nd Vict. c. 44, § 1, conveyances of land, not exceeding two acres, to a trustee or trustees, on behalf of any society or body of persons associated together for religious purposes or for the promotion of education, arts, etc., for the erection thereon of a building for such purposes, or whereon a building for such purposes shall have been erected, are exempted from the statutes of Mortmain.

As to removal of masters and mistresses, see 4 & 5 Vict. c. 38, § 17; and the Charitable Trusts Act (1853); and Chap. XVI., p. 200.

Section 2.—*Endowed Schools Act.*

By this Act (the 23d Vict. c. 11) the trustees and governors of every Endowed School are to make "such orders as, whilst not interfering with the religious teaching of other scholars as now fixed by statute or other legal requirement, and not authorizing any other than that previously afforded, shall admit the children

[1] This statute authorizes the gift of land for schools, although a benefit be reserved to the donor (Fisher *v.* Brierly, 29 Law Journal, 477; and see page 195).

[2] Forms and instructions under these Acts may be obtained at the Privy Council-office, Education Department, Whitehall, on written application, stating object, etc.

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of parents not in communion with the church, sect, or denomination to which the school belongs, provided there is nothing in the instrument of endowment expressly requiring all the children to be taught according to the doctrines, &c., of the particular church, sect, &c." But the Act (sec. 2) does not apply to any of the institutions mentioned in the 3d and 4th Vict. c. 77, § 24.

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CHAPTER XVIII.

Discipline of the Clergy.

Section 1.—*Residence.*

Residence necessary.

This subject is governed by the 1st & 2d Vict. c. 106. Every incumbent must reside in his benefice, *if with cure of souls* (§ 124), or one of them if he have more than one, and in the house of residence (if any).

Penalty.

If he be absent in one year more than three calendar months altogether, he forfeits one-third; if more than six months, one-half; if more than eight months, two-thirds; if for the whole year, three-fourths of the annual value: unless he have his bishop's license, or be resident in another of his benefices (§§ 32—44; and 9 Q. B. Rep. 691).

License of non-residence.

If there is no house of residence, or none fit for occupation, the bishop may license any house within three miles of the church, or two miles if in a town; the license to be renewed annually (see §§ 33 & 46).

The license is obtained by petition to the bishop, according to § 42. It may be granted on account of (*a*) incapacity of mind or body; (*b*) dangerous illness of wife or child residing with the incumbent; (*c*) where there is no house of residence, or an unfit one; or (*d*) where the incumbent occupies in the same parish a house of

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his own, he, however, keeping the parsonage in good repair (§ 43).

This may be granted for other reasons, with the consent of the archbishop (§ 44). Special License.

The fees are 10*s.* to the officer of the bishop, 3*s.* to the registrar, and 5*s.* to the archbishop's secretary, besides the stamp of 1*l.* in certain cases. Fees.

The Heads of Colleges having only one benefice (§ 37); Deans and Canons, whilst in residence; University and East India Professors, if performing duty; Royal, Episcopal, and Parliamentary Chaplains; the Chapel Royal Clergy; the Provost of Eton, Warden of Winchester, Master of Charterhouse, Principal of King's College, London, or St. David's, and preachers in the Inns of Court. The period of residence of *all* clergy of cathedral and collegiate churches counts as residence on their benefices, but the total period of absence must not exceed five months altogether (§ 39). Exemptions.

The license may be refused or revoked by the bishop for good cause, the incumbent, however, is to have sufficient opportunity to show cause to the contrary, with an appeal to the archbishop within one month after refusal or service of revocation (§ 49). Revocation.

The bishop is annually to send to the beneficed clergy questions as to residence, to be answered within three weeks. Annual Questions as to.

The bishop may, besides appointing a curate at a salary (see Chap. III.), proceed by monition, and after thirty days from its service, and no cause shown satisfactory to him, may require residence within thirty days after service of the order (1 & 2 Vict. c. 106, § 54), and on non-compliance may sequester the living: citation Enforcing Residence.

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is unnecessary (2 Ell. & Bl. 771). There is an appeal within one month.

After the benefice has been a whole year, *i.e.* from 1st January to 31st December (§ 120), under such sequestration, it becomes void (§ 58), and this although the non-residence for which it was sequestered was caused by the imprisonment of the incumbent (18 L. J. Exch. 25. Q. B. 11).

Section 2.—*Resignation*

What.

Is the voluntary yielding up of the interest of an incumbent in his benefice to the ordinary (Godolph. Abr. 284), and if a donative to the patron, and is not complete until accepted by them (3 Burn, E.L.). A presentation to any benefice, before acceptance, is void, and the bishop is not compellable to accept the resignation (Cripps, 644), unless where a special bond of resignation has been given under the 7th and 8th Geo. IV. c. 25; and 9th Geo. IV. c. 94, *infra*. But under the 1st & 2nd Vict. c. 106, presentation to a second living *ipso facto* vacates the first, without the bishop's acceptance (§ 11).

Bonds of Resignation.

Bonds to resign are good, if in favour of any one person specially named, or one of two persons specially named therein; but where there are two nominees, each must be, by blood or marriage, an uncle, son, grandson, brother, nephew, or grand-nephew, either of the patron or one of the patrons (not being merely trustees of the patronage), or of the person or persons for whom the patronage is held in trust, or by whose direction or in whose right (if

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a married woman) the presentation is to be made (9 Geo. IV. c. 94, § 2).

One part of the bond is to be deposited, within two months from its date, with the registrar of the diocese (§ 4); and the nominee must be presented within six months after the resignation.

The Act only applies to persons entitled to the patronage as *private* property (§ 6), and not to corporations, aggregate or sole, or trustees for charitable purposes.

Section 3.—*Exchanges.*

(*a*) Of Cures and Benefices.

License for necessary.

A license from the ordinary is *necessary* to treat for an exchange (Gibs. 863); both preferments must be spiritual, and the exchange must be completed in the lifetime of both parties (*ib.* 821); and the necessary resignation becomes, if either die before both are inducted, a nullity.

Simoniacal: when.

An exchange is simoniacal if either party "corruptly resign or corruptly take for or in respect of resigning or exchanging a benefice with cure of souls any pension or sum of money or other benefit whatsoever, directly or indirectly," and is followed by forfeiture by both giver and taker of double the value of such pension, &c. (31 Eliz. c. 6); and where, therefore, the benefices are not of equal value, no consideration for equality can be given or taken—not even the waiver of a claim for dilapidations (9 Mee. & Wels. 166, and 16 C. B. Rep., Old Series, 437).

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(*b*) Of Advowsons.

Exchange may be effected, through the Ecclesiastical Commissioners, of advowsons and rights of patronage, with consent of bishop and patrons, even when the latter are ecclesiastical corporations, aggregate or sole (3 & 4 Vict. c. 113, § 73; and 5 Vict. c. 39, §§ 21, 22, 23).

Section 4.—*Pluralities.*

When two Benefices may be held together.

By the 1st & 2nd Vict. c. 106, as amended by the 13th & 14th Vict. c. 98, no two *benefices with cure of souls* shall be held together, unless they are within three miles of each other, by the nearest road from church to church, *and* the annual value of one of them does not exceed 100*l.* net; *i.e.*, after deducting for taxes, rates, tenths, dues, and permanent charges, but not for curate's stipend. If the population of one benefice is more than three thousand, another cannot be held with it with a population above five hundred, according to the last census, whatever the distance or value, and *vice versa;* no clergyman holding more than one benefice can take any other, or any cathedral preferment (1 & 2 Vict. c. 106, § 2).

Dispensation.

A dispensation or license may be obtained through the bishop (§ 7) from the archbishop (§ 5), and an appeal from him lies to the Queen in Council (§ 6).

Vacation by Admission.

Under the 1st & 2nd Vict. c. 106, and the 13th & 14th Vict. c. 98, § 7, if any spiritual person *holding any benefice* accepts another, and is admitted, &c., thereto *contrary to the provisions of the Acts*, he, *ipso*

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facto, vacates his previous benefice, as if he had died or resigned.

Union of Benefices

Under the 18th & 19th Vict. c. 127, § 1, extended by the 23rd & 24th Vict. c. 142, any two or more contiguous benefices may be united by the Ecclesiastical Commissioners, on the report of the bishop, at the instance of the majority of the several parishioners, without reference to population or annual value (see Chap. IV.), and thenceforth be served by one incumbent.

Section 5.—*Penal Discipline of the Clergy.*

The clergy are punishable for irregularity in duty or heretical doctrine, by admonition, suspension, degradation, or deprivation.

Suspension

Suspension is a temporary deprivation or degradation, or both (3 Burn, E.L. 667), and operates as if the clerk affected be *pro tempore* dead.

Degradation.

By degradation a clergyman is deprived of holy orders (Gibs. 1066).

Deprivation.

By deprivation he loses his spiritual promotion (1 Degge, pt. i. c. 9). Deprivation is either without sentence, as when the offence is itself, by statute, an *ipso facto* deprivation (as to which, see Cripps, p. 660); as simony, or affirming or persisting in doctrine contrary to the Articles; or it is after sentence, as for disobedience to the constitutions of the Church. Felony or perjury, incontinence, drunkenness, and the like, are grounds for deprivation (Steer, Par. 92).

Discipline Act.

The Church Discipline Act, however (3 & 4 Vict. c. 86),[1] regulates the mode of proceeding criminally

[1] See the Act in Appendix C.

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against clergymen for offences against the ecclesiastical laws, or where there *exists scandal or evil report* against them as having so offended, and no *criminal* suit can be otherwise instituted in any *ecclesiastical* court (§ 23); but suits as to *civil* rights, though in form criminal, may be prosecuted as before (§ 19). Where the Ecclesiastical Court is resorted to, the clergyman must be cited, and charged by way of libel or articles. He is allowed counsel, and there is a solemn hearing and sentence by the bishop (Ayliffe, Parerg. 209).

Commission under.

Under the Discipline Act, the bishop of the diocese in which the offence is alleged to have been committed, on complaint or of his own accord, issues a commission to five persons (one being his vicar-general, archdeacon, or rural dean), to inquire and report; fourteen days' previous notice of the charge and of the name of the complainant, and of the intention to issue the commission, being sent to the accused (§ 3), who has also seven days' notice of the Commissioners' meeting; when they, or any three, take evidence on both sides (Bp. of London *v.* Bonwell, 6 Jur. N. S. 710) on oath in public as to there being a *prima facie* ground for further proceedings (§ 4), or sufficient to warrant further investigation (*ib.*). The accused is competent, and compellable to give evidence. (See Bishop of Norwich *v.* Pearse, 37 L. J. N. S. Ecc. 90.) The proceedings may, on the application of the accused, be in private. The Commissioners' report is filed, the opinion of the majority being binding, and the accused may have a copy thereof, and of the depositions, paying twopence per folio of ninety words; and a copy is sent to the bishop of any other diocese in which he

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may have preferment. The Commissioners (§ 3) are bound to confine their inquiries to offences committed within the diocese of the bishop who issues the commission (Homer and Bloomer *v.* Jones, 9 Jur. Old Series, 167).

Sentence by consent.

With the written consent of the accused and complainant, the bishop of the diocese in which he holds any preferment may now deliver sentence (§ 6).

If the report is that there *are prima facie* grounds, and the bishop of the diocese in which the accused holds any preferment, or the party complaining, think fit, the proceedings go on, articles are drawn up, signed by an advocate in Doctors' Commons, or any barrister practising in the Court of Arches (Mouncey *v.* Robinson, 37 L. J. N. S. Ecc. 8), filed, and served on the accused (§§ 7 and 8).[1]

Appearance and Defence.

Fourteen days after such service the said bishop summons the accused before him: he may appear in person, or by agent. If he admits the charge, sentence is pronounced by the bishop or his special commissary; if he deny it, or do not appear, the bishop hears the cause with three assessors, one being an advocate or barrister, and another his dean, or archdeacon, or chancellor. The bishop then pronounces sentence (§§ 9, 11), which may be enforced like that of an ecclesiastical court (§ 12).

Option to

The bishop has an option to issue the commission

[1] If the offence be unsoundness of doctrine, the articles must *specify* the unsoundness, and the particular Articles of Religion which they contravene, and not merely set out passages generally alleging unsoundness, etc. Heath *v.* Burder, 6 Jur. N.S. 785 (Privy Council).

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issue Commission.

or not (Queen *v.* Bishop of Chichester, 6 Jur. N. S. 120; 29 L. J. Q. B. 28);[1] but he must hear and consider the complaint before he exercise his option; and if a commission is issued, the complainant can compel him to carry it on (Queen *v.* the Archbishop of Canterbury, 17 L. J. Q. B. 252; 11 Q. B. 483; and Sheppard *v.* Bennett, *infra*).

Case sent to Court of Appeal.

Before the articles are filed, the bishop of the diocese in which the accused holds preferment, or, if he hold no preferment, the bishop of the diocese wherein the offence was alleged to have been committed, may send the case to the Court of Appeal of the province; either in the first instance or after the report of *prima facie* grounds, and *before* filing the articles; the judge of that court may make orders for expediting suits of this character; and there is no appeal from any interlocutory order not being in effect a definite sentence, save with the judge's permission (§ 13). It has been decided that the Court of Arches cannot refuse the letters of request (Brookes *v.* Cresswell, 4 Ecc. and Maritime Cases, 432; 10 Jur. 647, recently confirmed in Sheppard *v.* Bennett, Privy Council, June, 1869).

Suspension pendente lite.

The bishop in whose diocese the accused holds preferment, may prohibit him from performing the services of the Church whilst under trial, if he think scandal likely to arise, or that his ministration will be useless. Upon giving notice of inhibition, either with the articles or at any time pending proceedings before him or in any ecclesiastical court, an incumbent so prohibited may nominate a substitute to act during

[1] The prosecution in this case was at the instance of a ***stranger*** living out of the diocese.

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the inhibition, or in default the bishop may do so, and in either case may assign such substitute a stipend, and enforce it by sequestration (§ 14).

An appeal from the bishop or the Court of Appeal of the province lies to the archbishop in the former case, in the latter to the Queen in Council (§ 15). Appeal.

The attendance of witnesses, and their evidence on oath, and production of papers, may be compelled (§§ 17 and 18). Witnesses.

Exempt or peculiar places or preferments are not privileged (§ 22).

Where the bishop, acting judicially, is patron of any preferment of the accused, the archbishop is to act in his stead (§ 24). The authority which bishops may legally exercise over their clergy personally and without process of court is saved out of the operation of the Act (§ 25). It has been held that a bishop has no *such* authority in respect of heretical doctrine, and it would seem to follow that he has no power to prevent a *beneficed* clergyman from preaching such doctrine until fourteen days after he has served him with notice under § 3 (4 E. & B. 292, and see remarks of Ld. Denman, 2 Q. B. R. 1). This does not apply to curates, as to whom the bishop has summary power under 1 & 2 Vict. c. 106, § 98. Where Bishop is Patron.

The proceedings must be "commenced" within two years from the committal of the offence; and the proceedings are, in law, deemed to be "commenced," *not* with the commission, the report, or the service of the articles, but when the requisition to appear is served (Ditcher *v.* Denison, 31 Law Times, 61; and see 1 Law Times, N. S. 199). Proceedings to be within Two Years.

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Any person may prosecute a clergyman for neglect of his clerical duty; but as to proceedings under the Discipline Act, see Queen *v.* Bishop of Chichester, 6 Jur. N. S. 120, *supra*, p. 212, note.

Section 6.—*Sequestration.*

When.

Sequestration is sent out by the bishop, by his registrar, for the collection of the profits of a living,

Absence of Creditor.

either (*a*) at the suit of a creditor, who is then generally the sequestrator, to be paid to him till he is satis-

As a punishment.

fied, or (*b*) as an ecclesiastical punishment. In the first case the bishop acts ministerially in aid of the sheriff; in the second, originally.

For Debt.

The glebe, tithes, and profits of a benefice are not liable to seizure for debt as lay property; but upon the sheriff's return to the ordinary suit of *fi. fa.* of *nulla bona*, and that the judgment debtor is a beneficed clergyman, a writ of *levari* or *sequestrari facias* issues to the bishop, to sequester the benefice into his possession until he shall have levied the debt out of the rents, tithes, and profits thereof (10 Mee. & Wel. 42); or the writ may be a *fieri facias de bonis ecclesiasticis*, to levy the amount out of the debtor's ecclesiastical goods (Archbold's Practice, 8th ed. 1118).

The bishop then sends out a sequestration of the benefice to the churchwardens, to collect the rents, tithes, and profits; and after providing for the performance of the offices of the church, they are to pay the surplus to the judgment creditor, until he is satisfied his debt (2 Burn, E. L. 329).

Pending the sequestration, the bishop, under the

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1st & 2nd Vict. c. 106, § 99, is empowered, and if the incumbent does not perform the duties, he is *required*, to appoint and license a curate, or curates if the benefice has more than one church or a population exceeding two thousand.

For Repair.

If an incumbent neglect, after two months' monition from the bishop, properly to repair the parsonage-house and premises on his glebe, or when liable thereto to repair the chancel, in addition to ecclesiastical censures the benefice may be sequestered, and one-fifth part of the annual profits applied towards the repairs needed (3 Phill. 307).

Non-Residence.

If an incumbent of a benefice, not having license of non-residence, or any legal cause of exemption, fail for thirty days to comply with the order of the bishop requiring residence, the bishop may sequester the profits of the benefice until the order be complied with, or the non-compliance sufficiently explained (1 & 2 Vict. c. 196, § 54; and see section on "Residence," Chap. XVIII.); and if such requestration continues for more than a year the benefice becomes void (§58). Previous to such sequestration, however, a notice ought to be served on the incumbent from the bishop calling on him to show cause why the sequestration should not issue (16 Q.B. 162).

Illegal Trading, &c.

The bishop may sequester for illegal trading (§ 54), or for not giving up possession of the residence, &c., to a curate appointed by the bishop under § 114. In either case the sequestration, published by a copy being affixed on the church-door, is *then* in force. The sequestrator then becomes entitled to receive the revenues and profits, and is liable to the duties of the

Rights, &c., of Sequestrator.

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incumbent; *i.e.*, to provide for the proper service of the church, the bishop appointing the person to officiate, and his salary (Hubbard *v.* Beckford, Cons. R. 307), and the repairs of the personage, &c. (2 Phill. 8). By the 12th & 13th Vict. c. 67, § 1, sequestrators may sue in their own names for the recovery of rent, tithes, &c.

A *creditor* loses the right to sequestrate if he take the person of the debtor-incumbent in execution (1 & 2 Vict. c. 110, § 16). As to assignees in bankruptcy or insolvency, see Cripps, 636.

A sequestration under the Benefices Pluralities Acts, or Church Discipline Act, is to have priority over previous or other sequestrations (14 Q. B. 825).

Section 7.—*Simony.*

What.

Simony is the corrupt presentation of any one to an ecclesiastical benefice or dignity, for money, gift, or reward (Croke's Reports, Elizabeth, 790). The right of

Penalty for.

presentation is thereby forfeited, *pro hac vice*, to the Crown; both the giver and taker forfeit the double of one year's value of the benefice, one to the Crown and the other to the informer. The presentation is void, and the presentee is for ever incapable of enjoying the benefice.

It is simony if any person, for money or reward, paid or promised, shall either present, institute, induct, &c., to any ecclesiastical benefice or dignity, or shall purchase, in his own name or another's, the next presentation, and shall thereupon be presented. So also is a corrupt resignation or exchange.

The purchase of an *advowson* during vacancy, though

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void as to such vacancy, is not simoniacal (per Lord Hardwicke), unless connected with a corrupt contract as to presentation ; but purchasing a *presentation* during a vacancy undoubtedly is so (Cro. Eliz. 788).

If a clerk bargain for a next presentation for himself, it is void, whether the incumbent be *in extremis*, or (Cripps, 564) even if he be not ; but it is not void if the purchase is by another person, without the privity of the presentee (6 Bingham, Old Cases, 1).

An innocent clerk presented on a simoniacal contract is not punishable, although the presentation for that turn goes to the Crown (3 Hagg. 659).

A clergyman may, perhaps, purchase an advowson in fee, and be presented on the next vacancy (Cripps, 564).

Bond to Resign.

A bond to resign in favour of some one person, or at the patron's request, is not simoniacal (9 Geo. IV. c. 94), or if, where there are two nominees, both are related or connected with the patron, as in the Act specified. (See *supra*, "Resignation," as to the other requisites.)

It is *not* simony for a clergyman to acquire the next presentation to, or the advowson of, a church built and endowed under the Church Building Acts and New Parishes Acts. (See the 32 and 33 Vict. c. 94.)

See Appendix E.

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CHAPTER XIX.

Offences.

Section 1.—*Apostasy.*

If any person educated in, or having made professions of, the Christian religion, or writing, preaching, teaching, or advised speaking, deny the truth of the Christian religion *in toto*, or the divine authority of the Scriptures; on the *first* offence he becomes incapable to hold any office or place of trust; on the *second* offence he becomes incapable of bringing any action, or of being guardian, executor, legatee, or purchaser of lands; and shall suffer three years' imprisonment without bail, unless within four months after the first conviction he renounces his errors in open court.

No one can be prosecuted for *words spoken*, unless upon information on oath before a justice within four days, and the prosecution be within three months after the information (9 & 10 Will. III. c. 32, §§ 1, 2).

Section 2.—*Heresy*

Is the public and persistent denial (*not* of Christianity *in toto*, as in the case of apostasy, but) of some of its *essential* doctrines (1 Hale's Pleas of the Crown, 384). Thus, denying the Trinity, or maintaining that there

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be more gods than one, is heresy, and is punishable like apostasy (9 & 10 Will. III. c. 32). Unitarians, however, are exempt (53 Geo. III. c. 160; 1 Barn. & Cress. 26).

Section 3.—*Reviling Religion, &c.*

Reviling the Lord's Supper subjects to a fine and imprisonment (1 Eliz. c. 2; 1 Edw. IV. c. 1).

If any clergyman speak in derogation of the Book of Common Prayer, he shall, if not beneficed, be imprisoned one year for the first offence, and for life for the second. If beneficed, for first offence he forfeits a year's value, and is imprisoned for six months; for second offence he is deprived and imprisoned for twelve months; and for third offence he is deprived and imprisoned for life (1 Eliz. c. 2).

If *any* person (not being a Protestant Dissenter, 31 Geo. III.) shall, in plays, songs, or other open words, speak in derogation of the Book of Common Prayer, or shall forcibly prevent its being read, or read any other in its stead, he shall forfeit, for the first offence, 100 marks; for the second, 400; and for the third he forfeits all his goods and chattels, and is to be imprisoned for life (1 Eliz. c. 2; and see 9 & 10 Will. III. c. 32, *supra*).

Turning Christianity into ridicule is an indictable offence (1 Vent. 293; 3 Keb. 607).

Using any other form of prayer, rite, or ceremony than that contained in the Book of Common Prayer is punishable in the Ecclesiastical Court under the Church Discipline Act, and at common law under the Statutes of Uniformity (1 Eliz. c. 2; 13 & 14 Car. II. c. 4).

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Section 4.—*Blasphemy*

Is denying the being and providence of God, or uttering contumelious expressions as to the Holy Scripture or our Saviour.

It is punishable by fine and imprisonment (Hawk. P. C. vol. i. p. 358), and so is a blasphemous libel (*ib.*).

Section 5.—*Swearing and Cursing.*

By the 19th Geo. II. c. 21, every labourer, sailor, or soldier profanely swearing forfeits 1*s.*; every other person under the degree of a gentleman, 2*s.*; every gentleman, &c., 5*s.*, to the poor of the parish. On second conviction, double penalty; on a third, treble is inflicted. In default of payment, the sentence is imprisonment for ten days.

Section 6.—*Religious Impostors.*

False pretenders to an extraordinary commission from heaven, or persons using false denunciations of judgments, are punishable by fine and imprisonment (Hawk. P. C. vol. i. p. 358).

Section 7.—*Profanation of the Lord's Day.*

No fair or market is to be held on any Sunday (13 & 14 Vict. c. 23), or on Good Friday, unless for necessary victual, on pain of forfeiting the goods exposed for sale (27 Hen. VIII.). No persons may assemble out of their own parishes for any sport whatever

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upon Sunday, nor in their parishes shall use any bull or bear baiting, interludes, plays, or other unlawful exercises or pastimes, and every offender pays 3*s.* 4*d.* to the poor (1 Car. I. c. 1). No tradesman, artificer, workman, labourer, or other person whatever, is allowed to do any *work of their ordinary calling* upon the Lord's-day, works of necessity and charity only excepted, and every person of fourteen years or upwards so offending forfeits 5*s.*; and no person shall publicly expose to sale any wares whatever upon the Lord's-day, upon pain of forfeiting the goods (29 Car. II. c. 7); and no drover, carrier, or the like shall travel or come into his inn or lodging on that day, upon pain of forfeiting 20*s.* This applies to vans, but not to stage-coaches. No person on that day shall serve or execute any process (except for treason, felony, or breach of the peace), and such service or execution, if made, shall be *void.* Also by 21 Geo. III. c. 49, any houses which shall be used for public entertainment or public debate on the Lord's-day, and to which persons shall be admitted by the payment of money, shall be deemed disorderly houses, and subject to punishment accordingly. And by 18 & 19 Vict. c. 118, no licensed victualler, or person licensed to sell beer by retail, or to sell fermented or distilled liquors, or entitled to sell wine as a vintner of the City of London, shall open his house for sale of such liquors, or sell the same on Sunday, Christmas Day, Good Friday, or any Fast or Thanksgiving Day, between the hours of three and five o'clock in the afternoon, nor after eleven o'clock in the afternoon of any such day, or before four o'clock in the morning of the day following the same. Liquor, however, may be

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sold to a *traveller* or lodger. Moreover, by the same Act, no person shall, except in the way of refreshment for travellers, open any house or place of public resort for the sale of fermented or distilled liquors, or sell such liquors therein, within the times during which the sale thereof, by licensed persons or vintners, is prohibited as above mentioned. The penalty in each case is the forfeiture of a sum not exceeding 5*l.* for every offence, to be recovered on summary conviction before a justice of the peace, and every separate sale is a separate offence.

Section 8.—*Profanation, &c., of Churches and Chapels.*

All persons are protected from arrest, in *civil* proceedings, in church either on Sundays or on week-days, if attending religious services (Steer, 51). Clergymen are, in like manner, privileged in going to, or whilst performing or returning from, divine service (9 Geo. IV. c. 31, § 23).

Brawling. Quarrelling, chiding, or brawling, by words only, in any church or churchyard, whether by a layman or a clergyman, is punishable in the Ecclesiastical Court, under the 5th & 6th Ed. VI. c. 4, by suspension of the layman from entering the church, or, if a clerk, from ministration of his office; or at common law (Steer, 52).[1]

Passionate language (though by way of admonition) used by a clergyman during divine service has been held to be brawling (*ib.*); and so is reading a notice during

[1] By the 23d and 24th Vict. c. 32, the jurisdiction of the Ecclesiastical Court, in cases of brawling, etc., against persons *not* in holy orders, is taken away.

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divine service without due authority (2 Add. R. 463). Violent misbehaviour to the minister whilst presiding in a vestry, though not on consecrated ground, is perhaps punishable as an ecclesiastical offence (2 Add. R. 463).

Disturbing Minister or Congregation.

Persons wilfully and maliciously disturbing any minister or congregation during divine service may be apprehended by the constable, churchwarden, or other person present, and taken before a magistrate and punished, and on conviction fined (52 Geo. III. c. 155, § 12; 4 M. & S. 508). This extends to all lawful meetings for religious worship (9 & 10 Vict. c. 59, § 4).

By the 23d & 24th Vict. c. 32, § 2, riotous, violent, or indecent behaviour in any church, chapel, or certified place of worship, whether during service or not, or in any *churchyard or burial-ground*, and the molesting, disturbing, vexing, troubling, or by any other unlawful means disquieting or misusing any duly authorized preacher or clergyman ministering therein, are offences punishable, by two justices, with *5l.* penalty, or imprisonment for two months.

The offenders may be apprehended by any constable or churchwarden (§ 3).

Robbing, &c., Churches.

Robbing, &c., a church, is burglary (3 Burn, Inst. 64; 6 & 7 Will. IV. c. 4; and 5 & 6 Will. IV. c. 81). Burning a church or any chapel wilfully, and breaking and entering a church, and stealing any chattel therein, is felony (1 Vict. c. 29, §§ 3 & 5); and so is riotously demolishing or beginning to demolish any place of worship (4 & 5 Vict. c. 56, § 2; 6 Vict. c. 20; and see 24 & 25 Vict. c. 97, §§ 1, 11, 12, and c. 96 §§ 31, 50, 57).

Plays.

Plays are forbidden in churches (Canon 88), as also

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parish or other "musters" or meetings; they may, however, assemble in the porch, and then adjourn to some room in the parish.

Wearing Insignia of Office in.

By the Catholic Relief Act, the 10th Geo. IV. c. 7, § 25, it is enacted that no person holding a judicial, civil, or corporate office, shall be allowed to attend in his official costume, or with the insignia of his office, at any place for religious worship, other than that of the United Church of England and Ireland; or in Scotland, other than the Presbyterian Established Church of Scotland; under pain of forfeiture of the office, and a penalty of 100*l.* for every offence.

By the 18th & 19th Vict. c. 91, all places of religious worship not being churches or chapels of the Established Church may, if the congregation should desire it, be certified to the Registrar-General, and places so certified are exempt from the operation of the Charitable Trusts Acts.

Open Door.

By 52 Geo. III. c. 155, no congregation is to meet for religious worship with the door locked or otherwise fastened, under a penalty of 20*l.*, or not less than 40*s.*, on the person preaching (§ 11).

See also "Churchwardens," "Offences."

Section 9.—*Obstructing or Assaulting Clergymen.*

Assaulting or obstructing a clergyman or minister in the performance of worship or service in a church, &c., or burial-ground, and arresting him therein or in going to or returning therefrom, are misdemeanours (24 & 25 Vict. c. 100, § 36).

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CHAPTER XX.

Other Offences.

Division 1.—*Disorderly Houses.*

Keeping a common gaming-house is a nuisance, and the keeper may be indicted, and by 58 Geo. III. c. 70, persons appearing or acting as masters are to be considered as keepers. The 38th Hen. VIII. c. 9, prohibits the keeping of any gaming-house for profits, under a penalty of 40*s.* a-day; but merely playing at an inn, where the owner derives no benefit from it, is not within the Act.

Persons keeping a common gaming-house, a common bawdy-house, disorderly inns, or a common, ill-governed, and disorderly house, playhouses not licensed or improperly conducted, or unlicensed booths or stages, are subject to imprisonment and hard labour; and by 2 & 3 Vict. c. 47, any reputed common gaming-house in the metropolis may be forcibly entered by the police, and all present taken into custody. And see, as to punishment of those who keep or frequent betting or gaming-houses, 8 & 9 Vict. c. 109, and 17 & 18 Vict. c. 38.

If two inhabitants of any parish, paying scot and lot, give notice in writing to the constable of any person keeping a bawdy-house, make oath thereto, and

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enter into a recognisance in 20*l.* each, the constable shall prosecute at the next sessions or assizes. Provision is made for the constable's expenses, and 10*l.* is to be paid to each of the informants by the overseers.

Division 2.—*Falsification, &c., of Registers.*

Knowingly to insert, cause or permit to be inserted, in any registry of baptisms, marriages, or burials, any false entry relating thereto; forging, altering, or knowingly uttering any such false entry; wilfully to destroy, cause or permit to be destroyed or injured, any such register, or part thereof; forging, altering, or knowingly uttering any forged licenses of marriage;—all these cases are punishable with transportation for life, or any term not less than seven years, or imprisonment not exceeding four nor less than two years (4 Steph. Bl. 289; 6 & 7 Will. IV. c. 86, § 43). But upon the officiating minister discovering any error in an entry, he may, in the presence of the parents of the child baptized, or parties married, or of two persons present at the last illness, or, in case of the death or absence of any of those parties, then in the presence of the Superintendent-Registrar and two credible witnesses, within one calendar month after discovery, correct it in the margin (*ib.* § 44). In the copy of register transmitted to the registrar of the diocese the corrections made by the minister must be certified (and see Chap. III., "Duty as to Registers," p. 23).

Correction of Errors.

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N.B.—The *italics* in the statutes in the Appendix, except in the case of proper names, ates, titles of statutes, and the like, are introduced by the author for the reader's guidance.

APPENDIX A.

THE NEW PARISHES ACTS.

VIZ.:

SIR ROBERT PEEL'S ACTS, 1843 & 1844, AND LORD BLANDFORD'S ACT, 1856.

I.

ACT OF 1843.

6 & 7 VICT. c. 37.

An Act to make better Provision for the Spiritual Care of Populous Parishes.[1] [28th July, 1843.]

WHEREAS it is expedient to make better Provision for the Spiritual Care of populous Parishes, and to render the Estates and Revenues vested in "The Ecclesiasti-

[1] This and the two following Acts afford a simple and most complete means of effecting the subdivision of parishes into ecclesiastical or "new" parishes and districts, and provide a method by which *all* existing districts, chapelries, &c., may also become "new" parishes, and be thus rendered ecclesiastically independent of the mother-parish. (See Chap. IV.)

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cal Commissioners for *England*," and the Funds at the disposal of "The Governors of the Bounty of Queen *Anne* for the Augmentation of the Maintenance of the Poor Clergy," applicable immediately to such Purpose: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Ecclesiastical Commissioners for *England* may, upon the Conditions hereinafter mentioned, forthwith borrow, and the said Governors of the Bounty of Queen *Anne*, together with the Most Reverend *William Howley*, Lord Archbishop of *Canterbury*, may, upon the security hereinafter mentioned, forthwith lend and transfer to the said Commissioners, the Capital Sum of six hundred thousand Pounds Three Pounds *per Centum* Reduced Bank Annuities, Part of a certain sum of such Stock now standing in the Names of the said Governors and of the said Archbishop in the Books of the Governor and Company of the Bank of *England*.

Queen Anne's Bounty Board may lend Ecclesiastical Commissioners for England a sum of Stock.

2. And be it enacted, That at any Time and from Time to Time the said Commissioners may borrow, and the said Governors and the Archbishop of *Canterbury* for the Time being may, if they shall think fit, lend and transfer to the said Commissioners, in like manner, and upon the like Security and Conditions, any further Capital Sum or Sums of Stock, being Part of the Stock so standing as aforesaid.

Bounty Board may lend further Sums of Stock.

3. And be it enacted, That the said Commissioners shall, upon the Transfer of any such Stock as aforesaid into their Names in the Books of the said Governor and Company, accept the same in such Books, and shall pay or cause to be paid to the said Governors, by half-yearly Payments on the Tenth Day of *April* and the Fourteenth Day of *October* in every Year, a Sum equal in Amount to the Amount of the Dividends

Commissioners to pay Dividen is half-yearly.

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which such Stock, or so much thereof as shall on such Days respectively remain unreplaced, would produce; and that it shall be lawful for the said Commissioners at any Time to replace the whole or any Part of any such Sum or Stock.

The whole Property of the Commissioners under the Cathedral Acts to be Security for every such Loan.

4. And be it enacted, That all the Monies from Time to Time accruing to the said Commissioners by reason of the Suspension of Canonries by or under the Provisions of an Act passed in the Session of Parliament held in the Third and Fourth Years of the Reign of Her present Majesty, intituled *An Act to carry into effect, with certain Modifications, the Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues*, and of an Act passed in the Session of Parliament held in the Fourth and Fifth Years of the Reign of Her present Majesty, intituled *An Act to explain and amend Two several Acts relating to the Ecclesiastical Commissioners for England*, and all the Lands Tithes, Rentcharges, Tenements, and other Hereditaments vested or to be vested in them under the Provisions of the same Acts or of this Act, and the Rents and Profits thereof, shall be and the same are hereby charged and made chargeable with all such half-yearly Payments as aforesaid, and also with the Repayment and replacing of the whole Capital Stock so to be lent and transferred to them, if any such half-yearly Payment, or any Part thereof, shall remain unpaid for Twenty Days next after either of the Days upon which the same shall have become due and payable as aforesaid; and that upon any such Default as last mentioned the said Governors shall, by virtue of this Act, and upon Proof of such Default, have the same and the like Remedies at Law against the said Ecclesiastical Commissioners for *England*, and upon and over all the Monies, Lands, Tithes, Rentcharges, Tenements, and other Hereditaments in their Possession or Power under the Provisions of the said recited Acts,

3 & 4 Vict. c. 113.

4 & 5 Vict. c. 39.

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for the recovery of such Capital Stock, or so much thereof as shall then remain unreplaced, together with all Arrears or half-yearly Payments due thereon as afore aid, as if the said Commissioners had duly executed a Deed under their Common Seal, covenanting for Repayment to the said Governors of such Stock and for making such half-yearly Payment on the Day when such Default shall have become complete as aforesaid; and that such Transfer and Acceptance as aforesaid shall be sufficient Evidence of such Covenant.

Bounty Board may require Repayment of Capital after Thirty Years.

5. Provided also, and be it enacted, That it shall be lawful for the said Governors, if they shall see fit, at or after the Expiration of Thirty Years from the Date of the lending and transferring of the said Sum, and at or after the Expiration of a like Number of Years from and after the lending and transferring of any further Sum of such Stock as aforesaid, to give Notice to the said Commissioners, in Writing under their Corporate Seal, requiring them to replace, in the Names of the said Governors and of the Lord Archbishop of *Canterbury* for the Time being, the whole of such Sums of Stock respectively, or such Part thereof respectively as shall at the Date of such Notice remain unreplaced, and the said Commissioners shall proceed to replace the same accordingly, by yearly Instalments, amounting at least to One Twelfth Part of such Sums of Stock respectively, or of such remaining Part thereof as aforesaid, and upon default of their duly replacing any such Instalment the said Governors shall have the like Remedies for recovering the same, as for any Default in making any such half-yearly Payment as aforesaid.

Commissioners to have full Rights of Ownership over the

6. And be it enacted, That, notwithstanding the Charge by this Act created, all the same and the like Rights and Powers of Ownership as are possessed and enjoyed respecting and over any Lands, Tithes, Rent-

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charges, Tenements, or other Hereditaments whatsoever, *by any absolute Owner thereof*, shall be enjoyed by the said Commissioners with respect to and over all or any Lands, Tithes, Rentcharges, Tenements, and other Hereditaments vested and liable to be vested in them by or under the Provisions of the said recited Acts, and may, subject to the Provisions of the same Acts and of this Act, be exercised by them, by proper Instruments in Writing duly executed according to Law, but in the case of any such Lands, Tithes, Rentcharges, and other Hereditaments not actually in their Possession, with the Consent of the respective Holders thereof, testified by their being made Parties to such Instruments; and that the consent of the said Governors shall not be in any case required to the Exercise by the said Commissioners of any such Rights and Powers as aforesaid, notwithstanding such Charge: Provided always, that every sum of Money received as the Consideration or Purchase Money for the Sale, Transfer, or Conveyance by the said Commissioners of any such Lands, Tithes, Tenements, or other Hereditaments, or of any Estate or Interest therein, and also every Sum of Money received by them as the Foregift or Fine for the granting or renewing of any Lease, shall, unless it be deemed expedient by the said Commissioners to apply any such Sum or any Part thereof in replacing any Stock so lent and transferred as aforesaid, which they are hereby empowered to do, be applied by them, so soon as conveniently may be after the Receipt thereof, in the Purchase of Lands, Tithes, Rentcharges, Tenements, or other Hereditaments, or of some Estate or Interest therein, and shall in the meantime be invested in some Government or Parliamentary Stock or other Public Securities in *England*, the said Commissioners being at liberty to apply the Interest and Dividends of such Stock or Securities, and the Rents and Profits of such Lands,

Lands, etc., vested in them, subject to certain conditions.

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Rentcharges, Tithes, Tenements, and other Hereditaments, to the Purposes of the said recited Acts or of this Act.

Commissioners to have full Power over Stock.

7. And be it enacted, That the said Commissioners shall, for the Purposes and subject to the Provisions of the said recited Acts and of this Act, have full Power and Right of Property over all the Stock so lent and transferred to them by the said Governors as aforesaid.

Stock not to be used, nor Lands sold, without Approval of Her Majesty in Council.

8. Provided always, and be it enacted, That no Part of the Capital of such Stock shall be applied to such Purposes as aforesaid, nor shall any such Lands, Tithes, Tenements, or other Hereditaments as aforesaid be sold, transferred, or conveyed, except by the Authority in the said recited Acts provided; (that is to say,) by a Scheme prepared by the said Commissioners, and an Order issued by Her Majesty in Council, ratifying such Scheme.

Districts may be constituted for Spiritual Purposes:

9. And whereas there are divers Parishes, Chapelries, and Districts of great Extent, and containing a large Population, wherein or in Parts whereof the Provision for Public Worship and for Pastoral Superintendence is insufficient for the Spiritual Wants of the Inhabitants thereof: Be it therefore enacted, That if at any Time it shall be made to appear to the said Ecclesiastical Commissioners for *England* that it would promote the Interests of Religion that any *Part or Parts* of any such Parish or Parishes, Chapelry or Chapelries, District or Districts, or [that] any extra-parochial Place or Places, or any Part or Parts thereof, should be constituted a separate District for Spiritual Purposes, it shall be lawful, by the Authority aforesaid,[1] with the Consent of the Bishop of the Diocese under his Hand and Seal, to set out by Metes and Bounds and constitute a separate District accordingly, *such Dis-*

[1] That is, by a Scheme ratified by Order in Council.

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trict not then containing within its Limits any consecrated Church or Chapel in use for the Purposes of Divine Worship,[1] and to fix and declare the name of such District: Provided always, that the Draft of any Scheme for constituting any such District, proposed to be laid before Her Majesty in Council by the said Commissioners, shall be delivered or transmitted to the Incumbent and to the Patron or Patrons of the Church or Chapel of any Parish, Chapelry, or District out of which it is recommended that any such District or any Part thereof should be taken,[2] in order that such Incumbent, Patron or Patrons, may have an Opportunity of offering or making to the said Commissioners or to such Bishop any Observations or Objections upon or to the constituting of such District; and that such Scheme shall not be laid before Her Majesty in Council until after the expiration of One Calendar Month next after such Copy shall have been so delivered or transmitted, unless such Incumbent and Patron or Patrons shall in the meantime consent to the same: Provided also, that in *every* Scheme for constituting any such District the said Commissioners shall recommend to Her Majesty in Council, that the Minister of such District, when duly licensed as hereinafter mentioned,[3] *shall be permanently endowed, under the Provisions hereinafter contained*, to *an Amount of not less than the annual value of One Hundred Pounds;* and also, if such Endowment be of less than the annual Value of One Hundred and Fifty Pounds, that the same shall be increased under the like Provisions to such last-mentioned Amount at the least, so soon as such District

and are to be endowed to a certain Amount at the least.

[1] The words in italics are repealed. (See section 1 of Lord Blandford's Act, 1856.)

[2] See as to service of Scheme where incumbent absent, insane, &c.. the New Parishes Act, 1844, § 4.

[3] This is not now necessary in all cases. (See Act of 1856, § 3.)

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shall have become a new Parish as hereinafter provided.

Map of District to be annexed to Scheme, and registered.

10. And be it enacted, That a Map or Plan, setting forth and describing such Metes and Bounds,[1] shall be annexed to the Scheme for constituting such District, and transmitted therewith to Her Majesty in Council, and a Copy[2] thereof shall be Registered by the Registrar of the Diocese, together with any Order issued by Her Majesty in Council for ratifying such Scheme: Provided always, that it shall not be necessary to publish any such Map or Plan in the *London Gazette*.

Minister to be nominated and licensed to District.

11. And be it enacted, That upon any such District being so constituted, a Minister may and shall be nominated thereto in manner hereinafter provided, and may thereupon be licensed thereto by the Bishop, and [3]shall have Power to perform and shall perform within such District all such Pastoral Duties appertaining to the Office of a Minister according to the Rites and Usages of the United Church of *England* and *Ireland* as shall be specified and set forth in his Licence, and, when a Building shall be licensed within such District for Divine Worship in manner hereinafter provided, shall also perform such *Services and Offices* as shall be specified and set forth in the same or any further Licence granted in that Behalf by the Bishop of the Diocese; and such Ministers shall perform such Pastoral Duties, Services, and Offices respectively, independently of the Incumbent or Minister of the Church of any Parish, Chapelry, or District out of which such new District or any Part thereof shall have been taken, and shall, so far as the Performance of the same may be authorized by such Licence or Licences, have the

[1] See Act of 1844, § 9, as to altering bounds of district.
[2] See section 8 of Act of 1844.
[3] *i.e.*, When licensed. (See Act of 1848, § 10.)

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Cure of Souls in and over such new District: Provided always, that *no Burials* shall be performed in such licensed Building, and that nothing in this Act contained shall empower such Bishop to include in any such Licence the Solemnization of *Marriages*.

Style and Character of Minister;

12. And be it enacted, That such Minister shall be styled "The Minister of the District of ——," according to the Name thereof so fixed as aforesaid, and shall be in all respects subject to the Jurisdiction of the Bishop and Archdeacon within whose Diocese and Archdeaconry such District shall be situate, and shall only be removable from his Office of such Minister for the like Reasons and in the same Manner as any Perpetual Curate is now by Law removable; and such Minister shall be a Body Politic and Corporate, and shall have Perpetual Succession, as well by the Name and in the Character aforesaid, as by the Name and in the Character of *Perpetual Curate*, hereinafter mentioned and provided, as the Case may be; and such Minister and Perpetual Curate respectively may in such Name and Character respectively, notwithstanding the Statutes of Mortmain, receive and take, to him and his Successors, as well as every Grant of Endowment or Augmentation made or granted by the Authority aforesaid, as also any Real or Personal Estate or Effects whatsoever which any Person or Persons or Body Corporate may give or grant to him according to Law.

and Power to hold Endowments.

Bishop may license a temporary Place of Worship.

13. And be it declared and enacted, That it shall be lawful for the Bishop of the Diocese, at any Time after the constituting of any such District as aforesaid, to license any Building within such District which he may consider to be fit and proper for such Purpose, for the Performance of Divine Service by such Minister according to the Rites and Usages of such United Church; and such Minister may, for any

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Churchings performed under any such Licence, receive such Fees as shall be fixed and determined in manner hereinafter provided; and all Laws now in force relating to the Registration of *Baptisms* shall apply to all Baptisms performed under any such Licence.

Fees, see p. 2.

Not to prevent Marriages and Burials in Mother-Church, nor affect certain other Rights.

14. Provided always, and it be enacted, That *until* a Church or Chapel shall have been built or acquired within such District, and shall have been approved and consecrated as hereinafter provided, nothing herein contained shall prejudice or affect the Right of any Incumbent of any other Church or Chapel, who before the constituting of such District possessed the entire Cure of Souls within the same or any part thereof, to publish any Banns, solemnize any Marriages, or perform any Burials in his own Church or Chapel which he could have published, solemnized, or performed therein, or to receive any Fees, Dues, or Emoluments (except the Fees hereinbefore [1] authorized to be received by the Minister of such District) which as such Incumbent he could have received if such District had not been constituted, nor any Right to attend Divine Service in any other Church or Chapel, which any inhabitant of such District possessed before such District was constituted.

District to become a new Parish upon a Church being consecrated.

15. And be it enacted, That when any Church or Chapel shall be built, purchased, or acquired in any District constituted as aforesaid, and shall have been approved by the said Commissioners, by an Instrument in Writing under their Common Seal, and consecrated as the Church or Chapel of such District, for the Use and Service of the Ministers and Inhabitants thereof, such District shall, from and after the Consecration of such Church or Chapel, be and be deemed to be a new *Parish* for *Ecclesiastical* [2] Purposes, and shall be known as such by the name of "The new Parish

[1] In section 13.

[2] Not merely for "spiritual" purposes, as in section 9.

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of——," instead of "The District of——," according to the name so as aforesaid fixed for such District; and such Church or Chapel shall become and be the Church of such new Parish accordingly; and any Licence granted by the Bishop, licensing any Building for Divine Worship as aforesaid, shall thereupon become void; and *it shall be lawful* [1] to publish Banns of Matrimony in such Church, and according to the Laws and Canons in force in this Realm to solemnize therein Marriages, Baptisms, Churchings, and Burials, and to require and receive such Fees upon the Solemnization of such Offices, or any of them, as shall be fixed by the Chancellor of the Diocese in which such new Parish shall be situate, and which Fees, and also the Fees for Churchings to be received as aforesaid by the Minister of such District, such Chancellor is hereby empowered and required to fix accordingly; and the like *Easter* Offerings and Dues may be received within the Limits of such new Parish by the Perpetual Curate thereof as are and were, at and before the time of the passing of this Act, payable to the Incumbent of the Church of the principal Parish of which such new Parish originally formed a Part; and the several Laws, Statutes, and *Customs* in force relating to the Publication of Banns of Matrimony, and to the Performance of Marriages, Baptisms, Churchings, and Burials, and the registering thereof respectively, and to the suing for and recovering of Fees, Oblations, or Offerings in respect thereof, shall apply to the Church of such new Parish, and to the Perpetual Curate thereof for the Time being: Provided always, that it shall not be lawful for any such Minister or Perpetual Curate to receive any Fee for the Performance of any

Fees.

[1] These words, it has been contended, did not give the incumbent the *exclusive* right to perform the offices of the Church; (and see section 16) *sed quære.*

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Baptism within his District or new Parish, as the Case may be, or for the Registration thereof.

Minister to become Perpetual Curate of new Parish.

16. And be it enacted, That upon any such District so becoming a new Parish, the Minister of such District, having been duly licensed, shall, without any further Process or Form in Law, become and be Perpetual Curate of such new Parish and of the Church thereof, and shall have *exclusive* Cure of Souls in and over such Parish, and shall be a Body Politic and Corporate, and have perpetual Succession; and that such Parish and Church shall be and be deemed to be a Perpetual Curacy, and a Benefice with Cure of Souls, to all Intents and Purposes.

Churchwardens to be chosen.

17. And be it enacted, That in every such Case of a District so becoming a new Parish Two fit and proper Persons, *being Members of the United Church of England and Ireland*, shall, within Twenty-One Days from the Consecration of the Church thereof, be chosen Churchwardens for such new Parish, one being chosen by the Perpetual Curate thereof, and the other by the Inhabitants *residing therein*[1] and having a similar Qualification to that which would entitle Inhabitants to vote at the Election of Churchwardens for the principal Parish as aforesaid, or the Majority of such Inhabitants; and such Election shall take place at a Meeting to be summoned in such manner in all respects as such Perpetual Curate shall direct; and such Persons shall continue such Churchwardens *until the next usual Period of appointing Parish Officers following their Appointment*;[2] and at the like Time in every Year Two

[1] Therefore non-resident parishioners cannot vote for churchwardens, although qualified in other respects. This and the qualification of the churchwardens themselves are, it is conceived "*special* rights" saved under Lord Blandford's Act (the Act of 1856), section 29.

[2] It would appear that these, the first wardens appointed, do not, as in other cases, continue in office until successors are appointed. so that if their successors are not appointed at the usual time, there will be no churchwardens at all in office, or competent to act.

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such Persons shall thenceforward be chosen by the Perpetual Curate for the Time being and Inhabitants assembled as aforesaid; and every Person so chosen as aforesaid shall be duly admitted, and shall do all things pertaining to the Office of Churchwarden as to Ecclesiastical Matters in the said new Parish: Provided always, that nothing herein contained shall render any such Churchwardens liable or competent to perform the Duties of Overseer of the Poor in respect of such their Office of Churchwardens.

Not to affect Parochial Rights, etc., otherwise than as expressly provided.

18. Provided always, and be it enacted, That *until* Parliament shall otherwise determine, nothing herein contained shall be construed to affect or alter any Rights, Privileges, or Liabilities whatsoever, ecclesiastical or civil, of any Parish, Chapelry, or District, except as is herein *expressly* provided.[1]

Endowment of Minister.

19. And be it enacted, That the said recited Acts,[2] so far as they apply to making better Provision for the Cure of Souls, shall extend to authorize the Endowment or Augmentation of the Income of such Ministers and Perpetual Curates as aforesaid, to such an Amount or in such Proportion, and in such Manner, as shall be deemed expedient by the Authority aforesaid; and also to authorize the assigning, at any Time and from Time to Time, to the Incumbent of any Church or Chapel, whose Fees, Dues, or other Emoluments shall be diminished by or in consequence of any Proceeding under the Provisions of this Act, and if it be deemed fit for the like Authority, to his Successors also, of such an annual Sum as shall, upon due Inquiry, appear to be a just and reasonable Compensation for such Diminution.

Compensation to Incumbent of Mother-Church

Patronage may be con-

20. And be it enacted, any Law, Statute, or Canon to the contrary notwithstanding, That it shall be law-

[1] See sections 15 & 29 of Act of 1856.

[2] That is, 3d & 4th Vict. c. 113; and 4th & 5th Vict. c. 39. This power extends to ministers, &c., under the Act of 1856.

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ferred upon Contributors to Endowment or to a Church or their Nominees.

ful, by the Authority aforesaid,[1] at any Time to assign the Right of Patronage of any such District or new Parish as aforesaid, and the Nomination of the Minister or Perpetual Curate thereof respectively, either in Perpetuity or for one or more Nomination or Nominations, to any Ecclesiastical Corporation, Aggregate or Sole, or to either of the Universities of *Oxford*, *Cambridge*, or *Durham*, or to any College therein respectively, or to any Person or Persons, or the Nominee or Nominees of such Person or Persons or Body respectively, upon Condition of such Corporation, University, College, Person or Persons contributing to the permanent Endowment of such Minister or Perpetual Curate, or towards providing a Church or Chapel for the Use of the Inhabitants of such District or new Parish, in such Proportion and in such Manner as shall be approved of by the like Authority.[2]

Remaining Patronage to be exercised alternately by Crown and Bishops.

21. And be it enacted, That the Right of Patronage and Nomination of every such Minister and Perpetual Curate, unless or until such Right of Patronage and Nomination shall be otherwise wholly assigned, or except so far as the same shall be otherwise in part assigned, under the Provisions in that Behalf hereinbefore last contained, shall and may be exercised alternately by Her Majesty and Her Successors and the Bishop of the Diocese for the Time being in which the District or new Parish shall be situate; the first such Nomination being in each Case made by Her Majesty.[3]

Powers of Bounty Board as to Endowment under 2 & 3 Anne, c. 11,

22. And for the Encouragement of such Persons as shall be disposed to contribute towards the Purposes of this Act, and that their Charity may be rightly applied, be it enacted, That all and every Person or Persons, or

[1] That is, Scheme and Order in Council.

[2] This section is extended and altered by sections 16 to 19 of the Act of 1856.

[3] See sections 1 & 2 of the Act of 1844.

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Body Corporate, having in his or their own Right any Estate or Interest in possession, reversion, or contingency of or in any Lands, Tithes, Tenements, or other Hereditaments, or any Property of or in any "Goods or Chattels,"[1] shall have full Power, Licence, and Authority, at his and their Will and Pleasure, by Deed inrolled in such Manner and within such Time as is directed by the Statute made in the Twenty-seventh Year of the Reign of King *Henry* the Eighth, intituled *An Act concerning Enrolments of Bargains and Contracts of Land and Tenements*, in the Case of any Lands, Tithes, Tenements, or other Hereditaments, (but without any Deed in the Case of any Goods or Chattels,) or by his or their Testament in Writing, duly executed according to Law, to give and grant to and vest in the said Ecclesiastical Commissioners for *England* and their Successors all such his or their Estate, Interest, or Property in such Lands, Tithes, Tenements, or other Hereditaments, Goods, and Chattels, or any Part or Parts thereof, for and towards the Endowment or Augmentation of the Income of such Ministers or Perpetual Curates as aforesaid, or for or towards providing any Church or Chapel for the Purposes and subject to the Provisions of this Act, and to be for such Purposes respectively applied according to the Will of such Benefactors respectively, as in and by such Deed inrolled, or such Testament, executed as aforesaid, may be expressed, or, in the Case of no Deed or Testament, as may in some other Manner be directed, and in default of such Expression or Direction, then in such Manner as shall be directed by the Authority hereinbefore mentioned; and such Commissioners and their Successors shall have full Capacity and Ability to purchase, receive, take, hold, and enjoy for the Purposes aforesaid, as well as from such Persons as shall be so charitably disposed to give the same, as

and 45 G. 3 c. 84, conferred upon Commissioners for the purposes of this Act.

27 Hen. 8, c. 16.

[1] See, as to these words, section 7 of Act of 1844.

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from all other Persons who shall be willing to sell or aliene to the said Commissioners any Lands, Tithes, Tenements, or other Hereditaments, Goods, or Chattels, without any Licence or Writ of Ad quod damnum, the Statute of Mortmain or any other Statute or Law to the contrary notwithstanding.[1]

Powers of 3 & 4 Vict. c. 113, and 4 & 5 Vict. c. 39, extended to this Act.

23. And be it enacted, That all the Powers and Authorities vested in Her Majesty in Council and in the said Commissioners by the said recited Acts, with reference to the Matters therein contained, and all other the Provisions of the same Acts relating to Schemes and Orders prepared, made, and issued for the Purposes thereof, shall be continued and extended, and shall apply to Her Majesty in Council and to the said Commissioners, and to all Schemes and Orders prepared, made, and issued by them respectively, with reference to all Matters contained in this Act, as fully and effectually as if the said Powers, Authorities, and other Provisions were repeated herein; and the Provisions contained in an Act passed in the Second Year of Her Majesty's Reign, intituled *An Act to abridge the Holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy*, respecting the Party or Parties to be deemed Patron or Patrons, for the Purposes of Notice to be served upon and Consent to be given by such Patron or Patrons, and also respecting the Manner in which the Party by whom any such Consent is to be given, shall be construed to apply to the like Matters respectively under this Act.

1 & 2 Vict. c. 106.

Church Building Commissioners may make grants for Purposes of this Act.

24. And whereas it may be expedient that Her Majesty's Commissioners for Building New Churches should be able to apply a Portion of the Funds placed at their Disposal towards promoting the Purposes of

[1] Extended by section 4 of Act of 1856 to ecclesiastical and collegiate corporation, and also by the District Church Tithes Act, § 7, *infra*.

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this Act: *Be it enacted*, That it shall be lawful for the said Commissioners to make any such Grant in aid of the Erection of any such new Church or Chapel as aforesaid as shall seem fit to them, if they are authorized so to do under the Church Building Acts, although the Right of Patronage of such Church or Chapel may not belong on the Consecration thereof to the Incumbent of the original Parish in which such Church or Chapel shall be situate, anything in such Acts to the contrary notwithstanding.[1]

So much of 17 Car. 2, c. 3, as enables Impropriators to augment (repealed by 1 & 2 Vict. c. 106, s. 16) revived.

25. And whereas an Act was passed in the Seventeenth Year of the Reign of King *Charles* the Second, intituled *An Act for uniting Churches in Cities and Towns Corporate*, which, besides the Provisions indicated by the Title of the said Act, contains Enactments enabling Impropriators to augment Parsonages or Vicarages in certain Cases, and Incumbents in certain Cases to receive Lands, Tithes, and other Hereditaments, without Licence in Mortmain: And whereas by an Act passed in the Second Year of the Reign of Her present Majesty, intituled *An Act to abridge the Holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy*, the whole of the said Act of King *Charles* the Second was repealed, and more extensive Provisions were made for the uniting of Churches, but none for Augmentations or holding in Mortmain according to the same Act; and it is expedient that the last-mentioned Enactments should be revived: Be it therefore enacted, That so much of the said Act of King *Charles* the Second as enables any Owner or Proprietor of any Impropriation, Tithes or Portion of Tithes, to annex the same or any

See s. 23 and 27 of the 13 & 14 Vict. c. 94.

[1] Under this section and their own Acts the Church Building Commissioners used to authorize the taking of pew-rents in these "parish" churches.

By the 19th & 20th Vict. c. 55, the powers of the Church Building Commissioners were, from the 1st January, 1857, transferred to the Ecclesiastical Commissioners.

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Part thereof unto the Parsonage, Vicarage, or Curacy of the Parish Church or Chapel where the same lie or arise, or to settle the same in Trust for the Benefit of such Parsonage, Vicarage, or Curacy, and authorizes Parsons, Vicars, or Incumbents to receive Lands, Tithes, or other Hereditaments without Licence of Mortmain, shall be and the same is hereby revived; and that all Augmentations and Grants at any Time heretofore made according to the said Act of King *Charles* the Second, shall be as good and effectual as if the same had never been repealed.

Act not to extend to Scotland or Ireland.

26. And be it enacted, That this Act shall extend only to *England* and *Wales*, the *Isle of Man*, the Islands of *Guernsey*, *Jersey*, *Alderney*, and *Sark*, and the *Scilly Islands*.

Act may be amended this Session.

27. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.

II.

ACT OF 1844.

7 & 8 VICT. c. 94.

An Act to explain and amend an Act for making better Provision for the Spiritual Care of populous Parishes.

[9th August, 1844.]

6 & 7 Vict. c. 37.

WHEREAS an Act was passed in the last Session of Parliament, intituled *An Act to make better Provision for the Spiritual Care of populous Parishes;* and it is expedient to explain and amend certain of the Provisions of the said Act: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and

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Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That wherever any Right of Patronage of any District or new Parish constituted under the Authority of the said Act, and Nomination of the Minister or Perpetual Curate thereof, shall be assigned to or vested in or may be exercised by her Majesty, according to or under the Provision of the same Act, it shall be lawful for Her Majesty to nominate to the Bishop of the Diocese a Spiritual Person to be licensed to such District or new Parish as Minister or Perpetual Curate thereof, as the Case may be, by Warrant under her Royal Sign Manual; and such Warrant shall be full and sufficient Authority to such Bishop to license such Spiritual Person accordingly.

Crown may nominate Ministers by Warrant under Sign Manual.

2. And be it declared and enacted, That wherever any Right of Patronage of any such District or new Parish shall in like manner be assigned to or vested in or may be exercised by any Bishop, it shall be lawful for such Bishop to license a Spiritual Person to such District or new Parish as Minister or Perpetual Curate thereof, as the Case may be, in the same Manner, *mutatis mutandis*, as he may now by Law license a Spiritual Person to any Perpetual Curacy.

Bishop may license, as to any existing Perpetual Curacy.

3. Provided always, and be it enacted, That no Fee whatever shall be payable for or in respect of any such Warrant as aforesaid; and that a Fee of One Pound, and no more, shall be receivable by the Secretary of any Bishop for and in respect of each and every Licence granted by such Bishop of a Spiritual Person as Minister or Perpetual Curate of any such District or new Parish as aforesaid, or of any Building licensed by such Bishop within any such District for the Performance of Divine Service, pursuant to the Provisions of the said Act; and no further or larger Fee or Gratuity shall be receivable by any Person whomsoever for or in respect

Warrant without Fee.

Fee for Licence.

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of the making, issuing, or granting of any such Licence as aforesaid.

How Scheme to be served where Incumbent or Patron absent from England.

4. And be it declared and enacted, That wherever any Incumbent or Patron to whom, according to the Provisions of the said recited Act, it shall be necessary to transmit or deliver the Draft of any Scheme proposed to be laid before Her Majesty in Council, shall be beyond the Seas, it shall be and be deemed to be a sufficient Compliance with such Provisions to leave such Draft, in the Case of an Incumbent, at the House of Residence belonging to his Benefice or Church, or if there be no such House of Residence, then at his last usual Place of Abode in *England;* and in the Case of a Patron, at his last usual Place of Abode in *England:* Provided always, that in any such Case of an absent Incumbent or Patron such Scheme shall not be laid before Her Majesty in Council until after the Expiration of Two Calendar Months from the Day on which the Draft thereof shall have been so left, unless such Incumbent and Patron shall in the Meantime consent to the same.

How where Incumbent incapacitated or Benefice sequestered.

5. And be it declared and enacted, That in the Case of any such Incumbent being an Idiot or Lunatic or of unsound Mind, or of any Benefice or Church being under Sequestration, or of the Duties thereof being performed by a Curate duly appointed in consequence of the Suspension or the reputed Incapacity of the Incumbent thereof, it shall be and be deemed to be a sufficient Compliance with the same Provisions to deliver or transmit the Draft of any such Scheme to the Committee of such Idiot, Lunatic, or Person of unsound Mind, or to the Sequestrator, or to such Curate of such Benefice or Church, as the Case may be; and the Consent of such Committee, Sequestrator, or Curate, shall be deemed to be the Consent of the Incumbent, within the Meaning of the said Act.

6. And be it declared and enacted, That in any

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Case in which the Patronage of any Church or Chapel of any Parish, Chapelry, or District, is or shall be vested in and exercised by the Inhabitants generally of such Parish, Chapelry, or District, or by any Body or Class of Persons exceeding Five in number, it shall be and be deemed to be a sufficient Compliance with the same Provisions to deliver or transmit the Draft of any such Scheme to one of such Patrons, and to the Churchwardens or Chapelwardens of any such Church or Chapel, as the Case may be; and such Churchwardens or Chapelwardens, or one of them, shall thereupon cause Notice of the Contents of such Draft to be given to such Patrons, and shall ascertain their Objections, if any, or their Consent to such Scheme, in such Manner as the Ecclesiastical Commissioners for *England* shall direct, and such Churchwardens or Chapelwardens, or one of them, shall communicate the same to the said Commissioners, or to the Bishop of the Diocese; and the said Commissioners shall not lay such Scheme before Her Majesty in Council until after the Expiration of Two Calendar Months from the Day on which such Draft shall have been so delivered or transmitted, unless such Consent shall in the Meantime be given. How where Patrons numerous.

7. And be it declared and enacted, That in the construction of the said recited Act the Words "Goods and Chattels" shall be construed to extend to and comprehend all Personal Estate and Property whatsoever; and the Word "Testament" shall be construed to extend to and comprehend any Will or Testamentary Paper whatsoever, including under such Definition the Execution by any such Will, Testament, or Testamentary Paper of any Appointment, in pursuance of any Power, howsoever conferred or acquired. Construction of certain Terms in 6 & 7 Vict. c. 7.

8. And be it declared and enacted, That, notwithstanding anything in the said recited Act contained, Original Map or Plan

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may be registered.

it shall be lawful to transmit the original Map or Plan annexed to any Scheme laid before Her Majesty in Council under the Provisions of the said recited Act, to be registered in the Registry of the Diocese, instead of a Copy thereof, as provided by the same Act.

Bounds of Districts may be varied within limited Time.

9. And be it declared and enacted, That it shall be lawful, by the Authority in the said recited Act provided, at the Time or Times within Twelve Months after the Date of the Licence of the Minister first licensed to any separate District constituted under the Provisions of the same Act, to alter the Bounds of such District, although any alteration be not required with a View to the constituting of another separate District: Provided always, that the Scheme for making any such Alteration shall be subject to all the Provisions in the same Act, and in this Act contained relating to Schemes for constituting separate Districts thereunder; and that any Portion of any such separate District which by any such Alteration as aforesaid shall become detached or excluded therefrom shall to all Intents and Purposes again belong to and form Part of the Parish, Chapelry, or District out of which such portion was taken, upon such separate District being originally constituted, or to and of any new District, as shall be determined by the like Authority.[1]

Until Minister licensed, Cure of Souls not affected.

10. And be it declared and enacted, That in the Case of any District constituted under the Provisions of the said recited Act nothing contained in the Scheme or Order for constituting the same shall in any Manner whatever affect any Parish, Chapelry, or District, as to the Pastoral Superintendence of the Inhabitants thereof, or otherwise, *until a Minister shall have been duly licensed to such newly constituted District.*

[1] See 13 & 14 Vict. c. 94, § 27.

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11. And be it enacted, That any Grant, Conveyance, or Assurance which shall be made to the said Commissioners by Deed, under the Authority of the said recited Act, of any Lands, Tithes, Tenements, or other Hereditaments, may be made according to the Form in the Schedule hereunto annexed contained, or as near thereto as the Circumstances of the Case will admit; and every such Conveyance and Assurance shall be valid and effectual in the Law to all Intents and Purposes. Form of Grant or Conveyance.

12. And be it enacted, That this Act may be amended or repealed by any Act to be passed during this present Session of Parliament. Act may be altered this Session.

SCHEDULE.

I [*or* We, *or the Corporate Title, if a Corporation*], under the Authority of Acts passed in the Sessions of Parliament held in the Sixth and Seventh and Seventh and Eighth Years of the Reign of Her present Majesty, intituled respectively "An Act to make better "Provision for the Spiritual Care of populous Parishes," and "An Act to explain and amend an Act to make "better Provision for the Spiritual Care of populous "Parishes," do by these Presents freely and voluntarily, and without any valuable Consideration, give, grant, convey, and assure to the Ecclesiastical Commissioners for England all [*describe the Premises to be conveyed*], and all [my, *or* our, *or* the] Right, Title, and Interest [of, *if a Corporation*], to and in the same and every Part thereof, to hold to the said Commissioners and their Successors for the Purpose of [*describe the particular Purpose, being some Purpose within the Provisions of the said Acts, or say, generally*, for the purposes of the said Acts]. In witness whereof, *&c.*

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THE MARQUIS OF BLANDFORD'S ACT.

19 & 20 VICT. c. 104.

An Act to extend the Provisions of an Act of the Sixth and Seventh Years of Her Majesty, for making better Provisions for the Spiritual Care of populous Parishes, and further to provide for the Formation and Endowment of separate and distinct Parishes.

[29th July, 1856.]

WHEREAS it is expedient to afford *increased* Facilities for the Subdivision of populous Districts, and for the Formation thereout of separate and distinct Parishes for all Ecclesiastical Purposes, and also to make better Provision for the Endowment and Augmentation of poor Livings in *England* and *Wales:* And whereas by an Act passed in the Sixth and Seventh Years of Her Majesty, Chapter Thirty-seven, and by another Act passed in the Seventh and Eighth Years of Her Majesty, Chapter Ninety-four, the Ecclesiastical Commissioners for England are empowered, in the Case of Parishes, Chapelries, and Districts of great extent and containing a large Population, to constitute any Part or Parts thereof a separate District for Spiritual Purposes, such District not at the Time of so constituting the same containing within its Limits any consecrated Church or Chapel, and it is expedient that the Provisions of the said Act relative thereto, and to the Matter and things consequent thereon, should be *extended and amended* in Manner following: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the

6 & 7 Vict. c. 37.

7 & 8 Vict. c. 94.

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Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows: That,

Power to constitute new Districts under recited Acts.

1. It shall be lawful to constitute Districts under the provisions of the said Acts, notwithstanding that there may be within the Limits of any such District a consecrated Church or Chapel, any *Local Act* to the contrary notwithstanding.

See pp. 43 & 199.

District containing a Church to become a new Parish on being constituted a separate District by Order in Council.

2. It shall be lawful for the Commissioners, in the Scheme for constituting *any* District, to specify some existing or intended Church within the District as the Parish Church of such District, and immediately upon the issuing of the Order of Her Majesty in Council ratifying such Scheme such District shall become and be a new Parish, and such Church, when consecrated, the Church thereof, and the Incumbent of such Church the Incumbent thereof in the same Manner, and to the same Extent, to all Intents and Purposes, as is contemplated with respect to new Parishes formed under the said Acts, and to the Churches and Incumbents thereof respectively; and the Incumbent of such Church shall be liable to the Performance of all Pastoral Duties within the Limits of such new Parish.[1]

District may be constituted without providing Endowment as required by Sect. 9 of 6 & 7 Vict c. 37.

3. It shall be lawful to recommend the Constitution of *such* District[2] without providing in the Scheme for the same the permanent Endowment required by the Ninth Section of the first-recited Act, if it shall appear to the Commissioners, and shall be declared in the said Scheme, that there is Reason to expect from other Sources an adequate Maintenance for the Incumbent.

Section 22 of 6 & 7 Vict. c. 37, to

4. The Powers and Provisions contained in the Twenty-second Section of the said first-recited Act,

[1] Under these two sections, ancient chapelries may have their accustomed districts formally assigned, and thus become eventually or immediately parishes for ecclesiastical purposes.

[2] The Commissioners restrict, in practice, this expression to Districts mentioned in sec. 2; and they do not in any case dispense with the endowments required by the 9th sec. of the Act of 1841.

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Apply to Ecclesiastical and Collegiate Corporations.

enabling any Person or Body Corporate to give and grant Lands, Tithes, Tenements, or other Hereditaments, Goods, or Chattels for the Purposes of the said Act, shall be construed and held to authorize any Ecclesiastical or Collegiate Corporation, aggregate or sole, to give or grant any Lands, Tithes, Tenements, or other Hereditaments, Goods or Chattels, belonging to such Corporation, in such Manner as in the said firstly and secondly recited Acts mentioned, for the Purpose of the said recited Acts or of this Act: Provided always, that the said Powers shall not be exercised by the Incumbent of any Benefice with Cure of Souls without the Consent of the Patron of such Benefice.

Right to Pews in the old Parish Church not to be retained after Occupation of Sittings in the new.

5. Every Person resident within the Limits of any new Parish or District *already* formed under any of the Church Building Acts, or *hereafter* to be formed under the Provisions of the said Acts of the Sixth and Seventh Years of Her Majesty, Chapter Thirty-seven, and the Seventh and Eighth Years of Her Majesty, Chapter Ninety-four, or of this Act, who shall have claimed and have had assigned to him Sittings in the Church of such new Parish, shall thereby surrender, as to any Right that he may have possessed, an equal Number of Sittings[1] [2] in the Church of the original Parish or other Ecclesiastical District out of which such Parish shall have been taken, unless such last-mentioned Sittings be held by Faculty or under an Act of Parliament.

Pew Rents may be taken according to Scale, and applied towards

6. It shall be lawful for the Commissioners, *if it shall appear to them that sufficient Funds cannot be provided from other Sources, but not otherwise*, with the Consent of the Bishop of the Diocese under his Hand, to order and declare by an Instrument in Writing

[1] And see District Church Tithes Act, *infra*.

[2] This, it is conceived, does not apply to Sittings held by prescription.

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repair of Church and providing Endowment.

under their Common Seal that annual Rents may be reserved and taken in respect of any Pews or Sittings in any Church to or for which a District may *hereafter* be assigned under the Provisions of the said recited Acts or of this Act; and such Rents shall be charged, levied, and taken by the Churchwardens for the Time being of such Church after a Rate or Scale which shall be specified in such Instrument, and the Proceeds not otherwise appropriated by Law shall be applied towards the Repair and Maintenance of the same Church, and the Maintenance of the Minister, and the Services thereof, and the Endowment of such Church, in such Manner as shall be specified in such Instrument, and to no other uses: Provided always, that *One Half Part at least*[1] of the whole Number of Pews or Sittings in such Church shall be Free Sittings, and that it shall be shown to the Satisfaction of the said Commissioners that the said Free Sittings will, with respect to Position and Convenience, be as advantageously situated as those for which a Rent may be fixed and reserved.

Upon permanent Endowment of any Church or Chapel a proportionate number of Sittings to be declared free, or Scale of Pew Rents to be reduced.

7. Upon a permanent Endowment being provided for any Church in which Pew Rents have previously been authorized to be taken, and upon such Endowment being approved by the Commissioners, they may thereupon, under such an Instrument under their Common Seal as is hereinbefore mentioned, with the Consent of the Bishop of the Diocese, make an equivalent Reduction in the total amount of the Rents authorized to be taken for the Pews or Sittings, in such Church, if the same shall not be appropriated by Law for specific Purposes, either by a Reduction of the Rate or Scale, or by declaring certain specific

[1] The wisdom of this proviso is greatly doubted, and (except where the Commissioners are prepared to endow new churches) will operate to check church extension. It is believed that in certain cases the Commissioners exercise their Church Building Act powers, and require one-third only to be free, or even less.

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Pews or Sittings theretofore chargeable with the Rents to be absolutely free: Provided always, that if any Sum or Sums of Money have been borrowed under the Authority of any Act of Parliament or Order in Council upon the Security of Pew Rents, such Instrument shall not take effect until after the Repayment of all Sums so charged or chargeable.

Scale of Pew Rents may be altered.

8. It shall be lawful for the said Commissioners, with the *like Consent of the Bishop*, from Time to Time or at any Time, to rescind the whole or any Part of the Provisions contained in any Instrument such as aforesaid which may be in force; but no Alteration affecting the Emoluments of the Incumbent of any Church shall take effect until the next Avoidance of the Benefice, unless with his Consent in Writing.

Clerk and Sexton to be appointed by Incumbent.

9. The Parish Clerk and Sexton of the Church of any Parish constituted under the said recited Acts or this Act shall and may be appointed by the Incumbent for the Time being of such Church, and be by him removable, with the Consent of the Bishop of the Diocese, for any Misconduct.

Freeholds of Sites of Churches and Burial Grounds, to vest in Incumbents.

10. The Freehold of the Site of the Church of any new Parish created under this Act or the said firstly and secondly recited Acts and of the Churchyard, Burial Ground, and Vaults[1] belonging thereto, with the Rights, Members, and Appurtenances thereof, (but in case the same shall be vested in any Vestry by any Local Act of Parliament, then not without the Consent of such Vestry,) and the House of Residence, with the Appurtenances thereof, and all the Lands, Tithes, Tenements, Hereditaments, and other Endowments belonging to such Church, or held by or vested in any Person or Body Corporate in trust exclusively for or for the exclusive Benefit of the Incumbent of

[1] This means belonging in right or use to the church, and was held not to extend to a disused churchyard. (Champneys *v.* Arrowsmith, 2 L. R. C. P. 602.)

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such Church, shall become and be vested in such Incumbent and his Successors for ever, and be held and enjoyed by him and them in right of such Incumbency; and all Lands, Tenements or Hereditaments, granted or conveyed for the Site of any Church, and upon which any Church shall be built, or for a Burial Ground, shall from and after the Consecration of such Church and Burial Ground respectively remain and be freed from and discharged of all the Estate, Right, Title, Interest, Claim, and Demand of any Person, Body Politic or Corporate whatsoever, unto or out of the same or any Part thereof respectively, subject nevertheless to any Rent that may be reserved thereout, and to the Covenants and Conditions subject to which the same may have been granted or conveyed.

Offices of the Church to be performed in all Churches or Chapels, on Application of the Incumbent.

11. From and after the Commencement of this Act, the Commissioners may, if they shall think fit, upon Application of the Incumbent of any Church or Chapel to which a District shall belong, with the Consent in Writing of the Bishop of the Diocese, make an Order, under their Common Seal, authorizing the Publication of Banns of Matrimony and the Solemnization *therein* of Marriages, Baptisms, Churchings, and Burials, according to the Laws and Canons now in force in this Realm; and all the Fees payable for the Performance of such Offices, as well as all the Mortuary and other Ecclesiastical Fees, Dues, Oblations, or Offerings arising *within the Limits* of such District, shall be payable and be paid to the Incumbent of such District.[1]

12. In every Case in which (*a*) all or any part of the Fees or other Ecclesiastical Dues *arising within the*

[1] Incumbents of districts who have not been authorized to perform *all* the offices of the Church, should get an order to that effect, under this section; and then, upon the avoidance or relinquishment of the fees by the incumbent of the mother-parish (§ 12), the district will become a new parish, under sections 14 & 15, and the incumbent be thenceforth entitled to all the fees, dues, &c., arising within its limits.

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Reserved Fees to belong to original Incumbent until First Avoidance, then to the Incumbent of new Parish.

Limits of any District, or (*b*) payable in respect of Marriages, Baptisms, Churchings, and Burials in the Church or Chapel thereof, or (*c*) of such Fees as are hereby made payable to the Incumbent of any District, shall have been reserved, or (*d*) if such last-mentioned Order had not been made would of right belong to the Incumbent of the original Parish, District, or Place out of which the District of such Church or Chapel shall have been taken, or to the Clerk thereof, an Account of such Fees shall be kept by the Incumbent of such Church or Chapel, who is hereby required to receive and every Three Months pay over the same to the Incumbent and Clerk respectively, who would have been entitled to them in case such Districts had not been formed; and from and after the next Avoidance of *such Incumbency*, or the Relinquishment of such Fees by *such Incumbent*,[1] and after the Situation of such Clerk shall have become vacant, or after a Compensation in lieu of Fees has been awarded to such Clerk by the Bishop of the Diocese, which he is hereby empowered to do, such Reservation shall altogether cease and determine; and all *such Fees and Dues* shall belong to the Incumbent of the District within which the same shall arise, or to the Clerk of the Church thereof.

Provisions of 19th Section of 6 & 7 Vict. c. 37, extended.

13. The Provisions contained in the Nineteenth Section of the Sixth and Seventh *Victoria*, Chapter Thirty-seven, relating to Compensation to be given as therein mentioned, shall be applicable to and may be exercised by the Commissioners in like Manner with respect to Persons affected by the Provisions of this Act.

Districts may become separate and

14. Wheresoever *or* as soon as Banns of Matrimony and the Solemnization of Marriages, Churchings, and

[1] These words, in the case of a "Consolidated Chapelry," mean the Incumbents of all the Parishes out of which it is formed. (Gough *v.* Jones, Privy Council, 12 Law Times, N. S. 33, and 9 Jur. 82.)

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Baptisms,[1] according to the Laws and Canons in force in this Realm, are authorized to be published and performed in any consecrated Church or Chapel to which a District shall *belong* (such District not being at the Time of the passing of this Act a separate and distinct Parish for Ecclesiastical Purposes,[2] and the Incumbent of which is by *such Authority*[3] entitled for his own Benefit to the entire fees arising from the Performance of such Offices without any Reservation thereout), such District or Place shall become and be a separate and distinct Parish for Ecclesiastical Purposes, such as is contemplated in the Fifteenth Section of the first-recited Act, and the Church or Chapel of such District shall be the Church of such Parish, and all and singular the Provisions of the said firstly and secondly recited Acts (as amended by this Act) relative to new Parishes, upon their becoming such, and to the Matters and Things consequent thereon, shall extend and apply to the said Parish and Church as fully and effectually as if the same had become a new Parish under the Provisions of the said last-mentioned Acts.

distinct Parishes.

See Gough *v.* Jones, *supra*, and 9 Jur. 82.

15. The Incumbent of every new Parish created or hereafter to be created pursuant to the Provisions of the said firstly and secondly recited Acts or of this Act shall, saving the Rights of the Bishop of the Diocese, have sole and *exclusive* Cure of Souls, and the *exclusive* Right of performing all Ecclesiastical Offices within the

Incumbents of new Parishes to have exclusive Cure of Souls therein.

[1] There is no necessity for the right to bury.

[2] That is, not being a complete "Distinct and Separate Parish," a "District Parish," or a "Peel Parish" (see Schedule, Appendix B); but including District Chapelries, Consolidated Chapelries, Peel Districts, &c. The parenthesis here inserted is not in the Act itself, but it seems to indicate the strict grammatical reading of the Act. See observations of Dr. Lushington in Gough *v.* Jones, and of Lord Cranworth in the same case in the Privy Council.

[3] These words were held in Gough *v.* Jones to mean "the whole authority under which a District is constituted, including the 12th section, the relinquishment of fees being one mode of the incumbent becoming entitled to them."

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See p. 47, etc. Limits of the same, for the resident Inhabitants therein, who shall for all Ecclesiastical Purposes be Parishioners thereof, *and of no other Parish;* and such new Parish shall, for the like Purposes, have and possess all and the same Rights and Privileges, and be affected with such and the same Liabilities, as are incident or belong to a distinct and separate Parish, *and to no other Liabilities*.[1] Provided always, that nothing herein contained shall be taken to affect the legal Liabilities of any Parish regulated by a Local Act of Parliament, or the Security for any Loan of Money legally borrowed under any Act of Parliament, or otherwise.[2]

Provisions contained in Section 20 of 6 & 7 Vict. c. 37, extended.

16. The Provisions contained in the Twentieth Section of the said firstly-recited Act respecting the Assignment of the Right of Patronage, either in Perpetuity or for One or more Nominations, in certain Cases, by the Authority therein referred to, shall apply (*a*) to the case of the Patronage of *any* Church or Chapel *to which a District shall belong, and* the Patronage of which is vested in the Incumbent of the original Parish, District, or Place out of which such aforesaid District shall have been taken, by reason of his being such Incumbent, and not See p. 74, etc. of any Private Right, (*b*) *or of any new Parish* which shall hereafter be constituted under this Act, (*c*) *or of any existing Parish or District* having neither Incumbent nor Patron, (*d*) *or of any "Benefice"* the Patronage of which is vested in the *Crown*, or in the Chancellor of the Duchy of *Lancaster*, or in the Duke of *Cornwall*, (*e*) *or of any "Benefice"* the Patronage of which is

[1] By this section, all districts which have fulfilled, or shall fulfil, the conditions of the first part of the 14th section, are converted into distinct parishes for ecclesiastical purposes, and are as separate from the mother-parish, *quoad* ecclesiastical purposes, as if they had never formed part of it. Under sections 26 & 31, and under the Charitable Trusts Acts, and the 8th and 9th Vict. c. 70, § 22, an apportionment of the glebe, tithes, and parochial charities may be obtained for them.

[2] Such as a loan on the church-rates under the Church Building Acts, &c.

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vested in any Ecclesiastical or Lay Corporation, aggregate or sole: Provided that the permanent annual Endowment of such "*Benefices*" respectively shall not exceed One hundred Pounds *per Annum*, nor the annual Income of the same from all Sources the Sum of Two hundred and fifty Pounds *per Annum*, such Income to be calculated by the said Commissioners in the Manner provided in the Eighth Section of an Act of the First and Second of *Victoria*, Chapter One Hundred and Six, and when any Portion of such Income shall arise from Pew Rents, the Value of such Portion shall be calculated upon an Average of the Three Years last preceding.

Patronage may be conferred upon Contributors to Endowment, or their Nominees, upon certain Considerations.

17. It shall not be lawful for the Commissioners to assign *such* Patronage[1] as aforesaid *in Perpetuity* for any less consideration than the building a Church, as and for the Church of such Parish, District, or "Benefice," and providing for the permanent Endowment of such Church a clear yearly Sum of at least Forty-five pounds, or the permanently endowing the Church or Chapel of such Parish, District, or Benefice with a clear yearly sum of One hundred and fifty Pounds: Provided always, that the Commissioners may in lieu of such Sums, or as Part thereof, accept any Gift, Benefaction, or property which they shall judge to be suitable in its Nature; but provided always, that such Gift, Benefaction, or Property shall in the Judgment of the Commissioners, be equivalent to the said Sums in each Case respectively, or to the Part thereof in lieu of which it shall have been accepted.

Assignment of Patronage to be

18. *Such*[2] Assignment shall be made in the following Cases with the following Consents only; that is to

[1] *i.e.*, Under section 16 of *this* Act. (See Chap. V., Div. 2.)

[2] *i.e.*, In perpetuity. This seems to be the true construction, and it is also conceived that, from the peculiar use of the word "benefice" in these sections, the restrictions imposed by this section do not extend beyond the "benefices" specified as such in section 16.

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made with certain Consents.

say, in the Case of a "Benefice" in the Patronage of the *Crown*, or of the Chancellor of the Duchy of *Lancaster* for the Time being, or of the Duke of *Cornwall*, or of any Archbishop or Bishop, or of any Lay or Ecclesiastical Corporation *Aggregate*, with the Consent of the Patron thereof; and in the Case of a "Benefice" in the Patronage of an Incumbent of any other Benefice, with Consent of the Bishop of the Diocese, [and also with Consent of the Patron of such other Benefice, if in private Patronage]; and in the Case of any Parish or District having neither Incumbent nor Patron, with the Consent of the Bishop of the Diocese; and such Consent shall be testified in Manner provided by the One hundred and twenty-sixth and One hundred and twenty-eighth Sections of the Act of the First and Second *Victoria*, Chapter One hundred and six.[1]

Repealed by the 32 & 33 Vict. c. 94, sec. 18, *infra*, p. 237.

Notices to be sent to Patrons.

19. When the Commissioners shall intend to make any such assignment as aforesaid, they shall give Notice in Writing of such Intention to the Patron or Patrons of such Benefices, and to the Person or Persons whose consents are hereby required, and such Notice shall be served in Manner provided by the secondly-recited Act.[2]

Who to be deemed Patrons.

20. The Provisions of an Act passed in the Session holden in the First and Second Years of Her Majesty, Chapter One hundred and six, relative to the Party or Parties who shall be deemed the Patron or Patrons of the Benefices therein mentioned, shall be applicable for the Purposes of this Act.[3]

Patronage not to be sold. Penalty of Lapse for so doing.

21. Whenever the Right of Patronage of any such before-mentioned Benefice with Cure of Souls shall, pursuant to the foregoing Provisions of this Act, have become vested in Perpetuity in any Body or Person by

[1] See 1st and 2d Vict. c. 106, §§ 126 to 128, as to the mode of giving these Consents.

[2] See the Act of 1844, §§ 4—6.

[3] See the 1st & 2d Vict. c. 106, § 125.

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reason of such Body or Person having augmented the Endowment of such Benefice in such adequate Manner as is hereinbefore mentioned, and whenever such Benefice shall, at the Time of such Transfer of Patronage, be already permanently endowed with an annual Sum of not less than One hundred Pounds, or whenever the annual Income of such Benefice from all Sources shall, when calculated upon an Average of the Three Years immediately preceding such Augmentation, amount to One hundred and fifty Pounds, no subsequent Sale or Assignment or other Disposition of such Patronage by any Body or Persons whatsoever, for any valuable Consideration whatever, shall be made until Thirty Years next after such Transfer, unless the entire Proceeds be legally secured to the further permanent Augmentation of such Benefice; but every such Sale, Assignment, or other Disposition of such Patronage shall be illegal, and every Presentation, Collation, Admission, Institution, or Induction thereupon shall be void, and the Right of Patronage of such Benefice shall thereupon for that Turn lapse to the Bishop: Provided also, that when the Patronage of any Church or Chapel to which a District shall have been assigned is vested in the Incumbent of the original Parish, District, or Place out of which such District has been taken, the Person holding the Incumbency of such original Parish, District, or Place at the time of the passing this Act shall not be deprived of the Patronage of such Church or Chapel by any Assignment of the same during his Incumbency without his Consent.

Patronage may be vested in certain Cases in Incumbent of original Parish.

22. Upon the Constitution of a new Parish under this Act, it shall be lawful for the Commissioners, in the Meantime and until the Conditions of the said Acts or of this Act relating to the Assignment of the Patronage of the Church of such new Parish in consideration of an Endowment provided for the same

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shall have been complied with, and subject to the Conditions relating thereto herein contained, to assign such Patronage, if they shall see fit, to the then Incumbent of the original Parish out of which such new Parish shall have been taken for the Term of his Incumbency, and if such Parish shall have been formed out of more than One Parish, then to one or other of the then Incumbents of such Parishes for the Term of his Incumbency as they shall think fit, anything contained in the Twenty-first Section of the first-recited Act to the contrary notwithstanding.

Lands, Tithes, etc., and other Endowments to vest in Incumbent and his Successors.

23. All Endowments, of whatever Form and Character, which shall hereafter be provided for any Parish, District, or Benefice, and the Church or Chapel thereof, under the Provisions of the said firstly and secondly recited Acts or of this Act, shall be settled and assured by the Body or Person providing the same, to the Satisfaction of the Commissioners, by such Deed or Deeds and in such manner as the Commissioners shall from Time to Time direct, unto and to the Use of the Incumbent for the Time being of the Church or Chapel of such Parish, District, or Benefice, and his Successors for ever; and such Deeds shall be valid and effectual in Law to all Intents and Purposes, whether such Church or Chapel shall be vacant or full of an Incumbent, and notwithstanding the Statute of Mortmain, or any other Law or Statute whatsoever.

Appointment of Trustees, etc

24. Where the Commissioners shall make any Assignment of Patronage in Perpetuity, under the said first-recited Acts or this Act, to the Nominees of any Body or Person or of two or more Bodies or Persons respectively, such Nominees shall not be more than Five in Number, and shall be the Trustees for the Exercise of such Patronage, and shall be named in the Deed of Assignment by the said Bodies or Persons making such Endowment or Augmentation, or by the major Part in Value of the Subscribers thereto respectively of not less

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than Fifty Pounds; and every such Nominee shall upon his Appointment sign a Declaration that he is a Member of the United Church of *England* and *Ireland;* and all Vacancies which shall from Time to Time occur in the Number of such Trustees, from Death, Resignation, or Inability or Refusal to act, shall be filled up in such Manner as by the said Deed of Endowment shall be provided; and if it shall happen that all the Trustees for the Time being shall die without having (in pursuance of any such Power in the said Deed of Endowment) appointed any other Trustees or Trustee as their Successors, or in case any Vacancy in the Number of such Trustees shall not be filled up for the space of Two Years from the Date of such Vacancy occurring, then and in either case it shall be lawful for the Bishop of the Diocese to nominate, appoint, or complete the Number of Trustees by the said Deed of Assignment required; and every such Appointment, whether made in pursuance of the said Deed of Assignment or by the Bishop, shall be valid and effectual for the purpose of conveying the Right of Nomination; and during any Vacancy or Vacancies in the Office of Trustee the remaining or continuing Trustees or Trustee for the Time being shall be capable of acting, as fully and effectually as if such Vacancy or Vacancies had been duly filled up.

Parishes may be divided, with certain Consents.

25. It shall be lawful for the Commissioners, by the Authority aforesaid, and subject to such Consents as are hereinafter mentioned, to divide *any*[1] Parish into Two or more distinct and separate Parishes for all Ecclesiastical Purposes whatsoever, and to fix and settle the respective Proportion of Tithes, Glebe Lands, and other Endowments which shall arise, accrue, remain, and be within each of such respective Divisions, according as by the like Authority shall be deemed

[1] But not so as to affect special rights, see § 29; as, for instance, under local Acts.

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advisable; and the Order made by Her Majesty in Council, ratifying the Scheme for such Division, shall be good and valid in Law for the Purpose of effecting the same; and such Scheme shall set forth the particular Expediency of such Division, and how far it may be necessary in consequence thereof to make any Alteration in Ecclesiastical Jurisdiction, and how the Changes consequent upon such Division in respect of Patronage, Rights of Pew Holders, and other Rights and Privileges, Glebe Lands, Tithes, Rentcharges, and other Ecclesiastical Dues, Oblations, Offerings, Rates, and Payments, may be made with Justice to all Parties interested; and such Scheme shall also contain such Directions and Regulations relative to the Duties and Character of the Incumbents of the respective Divisions of such Parish, and to the Performance of the Offices and Services of the Church in the respective Churches thereof, and to the Fees to be taken for the same respectively, and to any other Matter or thing which may be necessary or expedient by reason or in consequence of such Change: Provided always, that such division shall be made in the following Cases with the following Consents only; that is to say, in the Case of a Benefice in the Patronage of the *Crown*, or in the Chancellor of the Duchy of *Lancaster* for the Time being, or of the Duke of *Cornwall*, or of any Archbishop or Bishop, or of any Lay or Ecclesiastical Corporation Aggregate, or of a Benefice in Private Patronage, with the Consent of the Patrons thereof respectively, with the Consent of the Bishop of the Diocese, such Consents to be testified as aforesaid: And provided also, that no such Provision[1] shall take effect until after the First Avoidance then next ensuing of the Church of the Parish to be so divided, unless with the Consent in Writing of the actual Incumbent thereof.

[1] *Quære*, "Division"?

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In New Parishes and Parishes already divided, a Division and Re-settlement of Endowments may be made.

26. In Cases where any Parish shall have been divided into Two or more distinct and separate Parishes, or where any District or new Parish shall have been constituted or formed out of any Parish, District, or Place, it shall be lawful, by the Authority aforesaid, and with the Consent of each of the respective Patrons and Incumbents of such distinct and separate Parishes, or of such Parish, District, or Place, as the Case may be, to make a Separation and Division of the Glebe Lands, Tithes, Rentcharges, and other Endowments belonging to such distinct and separate Parishes, or to such Parish, District, or Place, and to annex and resettle the same to and for the Benefit of such distinct and separate Parishes, or of such Parish, District, or Place, and the District or new Parish constituted or taken thereout, as the Case may be, in such Manner and Proportions as by the Authority aforesaid may be deemed expedient, and to make such Regulations and Arrangements as may be requisite for effectually completing such Division and Settlement as aforesaid; and upon every such Re-settlement of Endowments, whenever the whole of the Ecclesiastical Dues arising within the Limits of any Parish, District, or Place, consisting of any Prædial or Rectorial Tithe, shall become and be made payable to the Incumbent of such Parish, District, or Place, such Parish, District, or Place shall thereupon become and be a Rectory, and such Incumbent the Rector thereof, anything hereinbefore contained to the contrary notwithstanding.

As to providing Houses of Residence for Spiritual Persons serving any Church or Chapel.

27. For the Purpose of providing for the Incumbent of any Church or Chapel a convenient House of Residence, or for a Site thereof, or for a Garden or Glebe thereto, it shall be lawful for any Body or Person who shall give, grant, or convey to the Ecclesiastical Commissioners for *England* any Messuage, Lands, Tenements, or Hereditaments, to give or grant the same, and for the said Commissioners to receive

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the same, subject to such Conditions and Stipulations, for the Purpose of more effectually securing the same to and for the Use of such Spiritual Person aforesaid and his Successors for ever, as may be agreed upon between the said Commissioners and the Body or Person so giving or conveying the same.

Churchwardens to be paid Compensation for Rights of Common.

28. Whereas it is enacted by the Thirty-eighth Section of the Fifty-eighth *George* the Third, Chapter Forty-five, that a Sum for Compensation of Rights of Common shall be paid to the Churchwardens of the respective Parishes wherein such Commons or Waste Lands shall lie, and Doubts have arisen whether it is compulsory or permissive, on the part of the Churchwardens, to receive the same: It is hereby declared, that it shall be compulsory for the Churchwardens to accept Payment of the said Compensation.

Nothing to affect Provisions of 13 & 14 Vict. c. 41, etc.

29. Nothing herein contained shall be construed to affect or alter the Provisions of the Parish of *Manchester* Division Act, 1850, or to affect or alter any existing *or*[1] special Rights, Privileges, or Liabilities whatsoever, ecclesiastical or civil, of any Parish, District, or Place, except as is herein otherwise provided.

See p. 49.

Powers of 3 and 4 Vict. c. 113, and 4 & 5 Vict. c. 39, extended to this Act.

30. All the Powers and Authorities vested in Her Majesty in Council and the Ecclesiastical Commissioners for *England* by an Act of the Third and Fourth Years of Her Majesty, Chapter One hundred and thirteen, and by an Act of the Fourth and Fifth Years of Her Majesty, Chapter Thirty-nine,[2] with reference to the Matters therein contained, and all other the Provisions of the same Acts relative to Schemes and Orders prepared, made, and issued for

[1] This word "or" must, it is conceived, be construed and read as "and." The rights, &c., reserved are only those of the Parish, &c., in its collective character.

[2] These Acts give validity to the Commissioners' Schemes whe duly Gazetted, &c.

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the purposes thereof, shall be continued and extended, and shall apply to Her Majesty in Council, and to the Commissioners, and to all Schemes and Orders prepared, made, and issued by them respectively with reference to all Matters contained in this Act, as fully and effectually as if the said Powers, Authorities, and other Provisions were repeated herein, and the said recited Acts and this Act shall be read and construed as one and the same Act.

Commissioners may apportion Endowment.

31. It shall be lawful for the Commissioners, with the Consent of the Bishop of the Diocese and of the Patron and Incumbent of the Church of *any* Parish, to apportion any Sum arising from a permanent Endowment belonging to such Church, and applicable to the Repair and Maintenance thereof, to the Repair and Maintenance of any Church or Churches situated within the original Limits of such Parish, anything contained in any Local Act to the contrary notwithstanding.

For Purposes of Burial, Parishes to be Ecclesiastical Districts.

32. For the Purposes of the Acts concerning or regulating the Burial of the dead, every Parish created under the said recited Acts or this Act shall be held to be an Ecclesiastical District within the Meaning of the said Acts.[1]

Interpretation of certain Terms.

33. In the Construction of this Act:

The Expression "Parish, District, or Place," shall mean and include any ancient or distinct and separate Parish, District Parish, Chapelry, District Chapelry, Consolidated Chapelry, or Extra-parochial Place; and the Word "Extra-parochial Place" shall include any Township, Vill, Village, or Hamlet, being extra-parochial:[2]

[1] See 15 & 16 Vict. c. 85, §§ 35 & 52 (Metropolitan Burials Act). See also, as to New Burial Grounds in New Parishes and Districts, the Burial Acts Amendment Act, 20 & 21 Vict. c. 81, § 5.

[2] It will be seen that this definition does not include "Particular or Patronage Districts" formed under the 1st & 2d Will. IV. c. 38. This "expression" only occurs, however, in sections 16, 21, 26.

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The Word "Commissioners" shall mean the Ecclesiastical Commissioners for *England:*

The Word "Lands" shall extend to and include Manors, Messuages, Buildings, Tenements, and Hereditaments, corporeal and incorporeal, of every Tenure and Description:

The Word "Tithes" shall mean and include all commuted and uncommuted Rentcharges, in lieu of Tithes, Portions and Parcels of Tithe, and all Moduses, Compositions, Prescriptive and Customary Payments:

The Expression "Body or Person" shall mean and include any Body Politic, Corporate, or Collegiate, the Trustees, Guardians, Commissioners, or other Persons having the Control, Care, or Management of any Hospital, School, or Charitable Foundation, and any Corporation Aggregate or Sole, as well as one Person:

The word "Bishop" shall include Archbishop.

Extent of Act.

34. This Act shall extend only to that Part of the United Kingdom called *England* and *Wales*, and to the *Isle of Man*, and to the Islands of *Guernsey*, *Jersey*, *Alderney*, and *Sark*, and to the *Scilly Islands*.

Short Titles of Acts.

35. Whenever it may be necessary to cite the said recited Acts or this Act, it shall be sufficient to use the Expression "New Parishes Act," 1843, 1844, or 1856, as the case may require.

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DISTRICT CHURCH TITHES ACT.

28 & 29 Vict. c. 42.

An Act for facilitating the Annexation of Tithes to District Churches. [19th June, 1865.]

Whereas by the Act of the Session of the First and Second Years of His Majesty King *William* the Fourth, Chapter Forty-five, Section Twenty-one, it is amongst other things provided that it shall be lawful for any Rector or Vicar for the time being of any Rectory or Vicarage, by a Deed duly executed by him, to annex to any Chapel of Ease or Parochial Chapel to any District Church or Chapel, or any Chapel having a District assigned thereto, whether already built or hereafter to be built (such Chapel of Ease or other Chapel or Church, with the District or Place to which the same belongs, *being situate within* the Limits or within the original Limits of the said Rectory or Vicarage), any Part or Parts of the Tithes or other annual Revenues belonging to such Rectory or Vicarage: Provided that every such Annexation be made with such Consents as are therein mentioned. And whereas it is expedient to extend the Powers of annexing Tithes to District Churches: *Be it enacted* by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the Authority of the same, as follows: 1 & 2 W. c. 45.

1. This Act may be cited for all Purposes as "The District Church Tithes Act, 1865." Short Title of Act.

2. For the Purposes of this Act "District Church" shall include any Chapel of Ease or Parochial Chapel, Definition of Terms.

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or any District Church or Chapel or any Church or Chapel having a District assigned thereto, whether already built or hereafter to be built, and the Church of any *Parish formed or to be formed under the New Parishes Acts*, 1843, 1844, and 1856, or any of such Acts; and "District" shall include *any such Parish as last aforesaid*,[1] or any ancient or consolidated Chapelry, or *any Parish or District* formed under any of the *Church Building Acts, or any other General or Local Act;* and "Tithes" shall include "Commutation Rentcharges, and all Moduses, Compositions, prescriptive and other Payments or Redemption Money in lieu of Tithes," or any Part or Parts thereof respectively, and any Land for which such Tithes or other Payments in lieu thereof may have been commuted.

Power to Rectors or Vicars to sell Tithes to District Church.

3. The Rector or Vicar for the Time being of any Rectory or Vicarage may agree with the Incumbent of any District Church, either *wholly or in part*, situate within the Limits or original Limits of the said Rectory or Vicarage, to annex to such District Church the Tithes or Part of the Tithes belonging to such Rectory or Vicarage, *and arising in respect of Property situate within the District belonging to such District Church*, in consideration of a sufficient Compensation being made to the said Rector or Vicar and his Successors for the Loss of the said Tithes out of the Endowments of the said District Church, or by some other Means.

Assents required to Agreement.

4. No Agreement shall be valid on the Part of a Rector or Vicar under this Act unless it be assented to, firstly, by the Archbishop or Bishop of the Diocese within which his Rectory or Vicarage is situate, or if it be situate within a peculiar Jurisdiction belonging to an Archbishop or Bishop by such last-mentioned Archbishop or Bishop, and, secondly, by the Patron of the Rectory or Vicarage; and no Agreement shall be

[1] *i.e.*, New Parish.

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valid on the Part of the Incumbent of a District Church except with the Consent of the Patron of such Church, and with the Approval of the Ecclesiastical Commissioners for *England* where the Compensation to be made to the Rector or Vicar is payable out of funds in the Hands of the said Commissioners, and of the Governors of the Bounty of Queen *Anne* for the Augmentation of the Maintenance of Poor Clergy where the Compensation to be made is payable out of Funds in the Hands or subject to the Control of the said Governors.

Form of Agreement.

5. Any Agreement under this Act between a Rector and Vicar on the one Part and an Incumbent of a District Church on the other shall be in Writing under their respective Hands.

Assents how testified.

6. Any Assents required by this Act may be testified by the assenting Party executing the Agreement between the Rector or Vicar and the Incumbent of the District Church, and the Provisions of the above-mentioned Act, and of the Act of the Session of the Seventeenth and Eighteenth Years of Her Majesty, Chapter Eighty-four, as to Patrons of Benefices shall apply to the Assent of Patrons under this Act.

Persons and Bodies Corporate empowered to give Lands or goods for the Purposes of this Act.

7. The Provisions of the Twenty-second Section of the Act of the Session of the Sixth and Seventh Years of the Reign of Her present Majesty, Chapter Thirty-seven, enabling Persons and Bodies Corporate to give Lands or Goods for the Purposes of that Act, shall extend to authorize them to give in manner therein mentioned Lands or Goods for the Purposes of purchasing any Tithes, or to give any Tithes, with a view to the Annexation of such Tithes to a District Church.

Agreement to be carried into effect by Order in Council.

8. Any Agreement made in pursuance of this Act, shall be carried into effect by the Ecclesiastical Commissioners for *England*, and any Order made by Her Majesty in Council ratifying such Agreement, and transferring on the one Side the Tithes proposed to be

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transferred to the Incumbent of the District Church, and on the other securing to the Rector or Vicar the Compensation agreed upon, shall be valid to vest in the said Incumbent and his Successors such Tithes, and to secure to the said Rector or Vicar such compensation; and when the Approval of the Governors of the Bounty of Queen *Anne* is required, such Approval may be certified by any Instrument under their Corporate Seal; and when the Approval of the said Ecclesiastical Commissioners is required, it shall be implied by such Order in Council as aforesaid being passed.

Where Tithes belong to Incumbent of District Church, Ecclesiastical Commissioners may delare Church to be either a Rectory or Vicarage. (Repealed, see next page.)

9. Where *Tithes of any Kind or Amount belong to* or shall to the Satisfaction of the Ecclesiastical Commissioners be *transferred* to the Incumbent of the Church of *any Parish, Chapelry, or District (provided such Tithes arise within such Parish, Chapelry, or District)*, or where any Annuity shall be granted by the Ecclesiastical Commissioners to any Incumbent in consideration of Tithes arising within the Limits of his District, and now or at any time in the Possession of the said Ecclesiastical Commissioners, it shall be lawful for the said Ecclesiastical Commissioners, by Instrument under their Common Seal, to declare that such Church shall be and be deemed to be *either a Rectory or Vicarage*, as they may under the Circumstances of each Case think proper, and such Instrument shall be published in the *London Gazette*, and take effect from the Time of Publication.

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DISTRICT CHURCH TITHES ACT AMENDMENT ACT.

31 & 32 Vict. c. 117.

An Act to amend the District Church Tithes Act, 1865, *and to secure Uniformity of Designation amongst Incumbents in certain cases.* [31st July, 1868.]

Whereas it is expedient to amend the Provisions of the District Church Tithes Act, 1865, in reference to the Style and Designation of certain of the Beneficed Clergy of the United Church of England and Ireland: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—

Sect. 9 of 28 and 29 Vict. c. 42, repealed.

I. The Ninth Section of the said District Church Tithes Act, 1865, shall be and the same is hereby Repealed.

Incumbents of certain Parishes, etc., to be Vicars.

II. The Incumbent of the Church of every Parish or New Parish for Ecclesiastical Purposes, not being a Rector, who is or shall be authorized to publish Banns of Matrimony in such Church, and to solemnize therein Marriages, Churchings, and Baptisms, according to the Laws and Canons in force in this Realm, and who is or shall be entitled to take, receive, and hold for his own sole Use and Benefit the entire Fees arising from the Performance of such Offices, without any Reservation thereout, shall, from and after the passing of this Act,

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for the purpose of Style and Designation, but not for any other Purpose, be deemed and styled the Vicar of such Church and Parish or New Parish, as the Case may be, and his Benefice shall for the same Purpose be styled and designated a Vicarage.

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NEW PARISHES AND CHURCH BUILDING ACTS AMENDMENT.

32 & 33 Vict. c. 94.

An Act to amend the New Parishes Acts and Church Building Acts. [11th August, 1869.]

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, as follows:—

Powers of New Parishes Acts to apply at any time to new parishes for ecclesiastical purposes.

I. The powers and provisions relating to the alteration of the boundaries of districts which are contained in the ninth section of the "New Parishes Act, 1844," shall, notwithstanding the lapse of the periods of twelve months and five years mentioned in the same section and in the twenty-seventh section of the Act of the thirteenth and fourteenth years of Her Majesty, chapter ninety-four, respectively, or either of them, be at any time applicable to the alteration of the boundaries of any and every ecclesiastical district which may or shall have become a new parish for ecclesiastical purposes under the provisions of the "New Parishes Acts," whether such district has been or shall have been originally created under the provisions of the said Acts or any of them, or of any other Act of Parliament.

Pews or sittings may be surrendered to Ecclesiastical Commissioners.

II. Whenever by virtue of any public or private Act of Parliament now or hereafter in force, or by virtue of any deed or instrument, the pews or sittings, or some or one of the pews or sittings, in any church

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See Chap. V. Div. 3.

or chapel, consecrated or unconsecrated, are or is or shall be subject to any trust as to the grant, demise, sale, or disposal of such pews or sittings, pew or sitting, are, or is, or shall be the private property for any estate whatsoever of any person or persons, then and in every such case it shall be lawful for the trustees of such church or chapel, or other the persons exercising powers of grant, demise, sale, or disposal as aforesaid, or for all or any persons possessing on their own behalf or on the behalf of others any rights, qualified or unqualified, of ownership, by reason of any such grant, demise, sale, or disposal as aforesaid, or for any person or persons to whom any pews or sittings, pew or sitting, in such church or chapel, shall belong, for any estate whatsoever, under or by virtue of such Act of Parliament, deed, or instrument as aforesaid, with or without consideration, to surrender and for ever yield up, either altogether or separately, and according to the nature and extent of their several rights and interests, to the bishop of the diocese wherein such church or chapel is situate, or to the Ecclesiastical Commissioners for England, who are hereby respectively authorized to accept every such surrender, all rights of ownership, grant, demise, sale, disposal or other right whatsoever which they the said trustees, persons or person, may have in, over, or in respect of such pews or sittings, pew or sitting.

Surrender to be by deed, executed by the parties, including bishop of diocese.

III. Every such surrender shall be made by deed executed by all the parties to the same, amongst whom shall be included the bishop of the diocese wherein the church or chapel to be affected by it is situate, and the patron or patrons of such church or chapel aforesaid; and such deed shall be registered in the registry of the said diocese.

Upon surrender, all rights of ownership,

IV. So soon as all rights and powers over or in respect of the pews or sittings in any such church or chapel shall have been surrendered to the bishop of

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the diocese or to the said commissioners as aforesaid, the trusts or rights of ownership, and the obligations affecting such pews or sittings, or any of them, under such Act of Parliament, deed, or instrument as aforesaid, shall at once and *ipso facto* determine, and all the provisions of such Act of Parliament, deed, or instrument as to pews or sittings in such church or chapel shall thenceforth be void and of none effect. etc., to cease.

V. From and after every such surrender to the said bishop or commisioners, the pews or sittings, pew or sitting, affected thereby shall, to the extent of the rights or powers expressed to be surrendered, be subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches are now subject to: Provided that if the church or chapel be not consecrated such pews or sittings, pew or sitting, shall belong absolutely to the bishop and his successors or to the said commissioners, as the case may be, until the consecration of the said church or chapel, and from and after the consecration thereof the right of the said bishop or commissioners shall cease, and the said pews or sittings shall be subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches. And pews, etc., subject as pews of ancient parish churches.

VI. The powers and provisions hereinbefore contained as to pews and sittings subject to trusts as aforesaid in any such church or chapel as aforesaid shall, *mutatis mutandis*, be held to apply to and shall be held to authorize the absolute transfer and conveyance to the said commissioners, by any deed or deeds, made without consideration and executed by all the parties thereto as aforesaid, of the freehold of any church or chapel, consecrated or unconsecrated, and of the vaults therein or thereunder, which, under or by virtue of any such Act of Parliament, deed, or instrument, as aforesaid, is, or are, or shall be vested in Powers hereinbefore contained to apply to and authorize absolute transfer to Ecclesiastical Commissioners

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any persons or person in their own right or as trustees or trustee of such church or chapel for an estate in perpetuity; and if such church or chapel be unconsecrated at the time of such transfer and conveyance, such freehold so transferred and conveyed shall remain in the said commissioners until the consecration of the same church or chapel, and shall then *ipso facto* become subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches.

Upon complete surrender, all rights created by Act for building church to cease.

VII. In every case in which a complete surrender and determination of the rights, powers, obligations, and trusts affecting the pews or sittings in a church or chapel shall have been carried out as aforesaid, and in every case in which such transfer and conveyance as aforesaid of the freehold of a church or chapel, and the vaults (if any) thereof, shall have been effected, all other rights, powers, obligations, and trusts created, conferred, or enforced as to such church or chapel by the Act of Parliament, deed, or instrument under which such church or chapel was built, shall upon such complete surrender and determination, or (as the case may be) such transfer and conveyance, absolutely cease and determine: Provided always, that such cesser and determination shall not diminish or in anywise affect any right or rights of patronage.

Provision for sites of churches pulled down

VIII. In and by any faculty granted by a bishop for wholly pulling down any church, under the provisions contained in the first section of the Act eighth and ninth Victoria, chapter seventy, it shall be lawful to make such provisions as such bishop may deem proper and expedient for the use or preservation of the site of such church, either by the incumbent of the substituted church, or by the churchwardens of the parish wherein such site lies, or by any other person being the owner of the freehold of the land adjoining such site, with the consent of the incumbent and of such other person.

The portions

IX. In every case where the respective incumbents

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of two or more benefices held in severalty (whether each of such benefices belongs to the same patron or to different patrons) have or shall have by statute or by custom the right in virtue of their respective incumbencies to execute the office of an incumbent within one and the same church, and within no other church other than a chapel of ease, then the powers and provisions given by and contained in the seventy-second section of the Act of the third and fourth years of Her Majesty, chapter one hundred and thirteen, with respect to the consolidation of two or more portions of a benefice divided as therein mentioned into one benefice to be held by one incumbent, shall, subject to the conditions therein expressed, be available for and shall apply to and may be used for effecting the consolidation of both or all of such benefices into one benefice to be held by one incumbent, and this notwithstanding that such benefice when so united may include the cure of souls within more than one parish: Provided always, that any plan or scheme for such consolidation to be framed under the provisions of the Act last mentioned may contain a regulation that such consolidation shall not take effect until after the next avoidance of any one or more of such benefices to be specially named in such plan or scheme; and provided also, that nothing herein contained shall be held to create an union of the two or more parishes so as aforesaid to be included within such united benefice, but that each of such parishes shall remain for all purposes, civil and ecclesiastical, precisely in the same position as if no such union of benefices as aforesaid had taken place.

of a benefice held in severalty may be consolidated into one.

X. So much of the eighteenth section of the Act of the ninteenth and twentieth Victoria, chapter one hundred and four, as requires that in the case of a benefice in the patronage of the incumbent for the time being of any other benefice the consent of the patron of such other benefice, if a private patron, shall be necessary

Part of 19 and 20 Vict. c. 104, § 18, repealed.

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in order to effect an assignment of patronage under the last-mentioned Act is hereby repealed; but the private patron in any such case shall have one month's notice from the Ecclesiastical Commissioners, and he may require the commissioners to assess the amount of diminution in the value of his advowson, if any, likely to be caused by any contemplated assignment of patronage under the said Act, or may require that such diminution shall be ascertained by reference to the decision of two arbitrators, one to be appointed by himself and the other by the commissioners, and if thereupon it shall appear that any such diminution will be caused by the assignment of patronage contemplated, such private patron shall be entitled to claim and recover the amount of such diminution from the person or persons or body to whom the said assignment of patronage may be made.

As to parish where there is no church and no patron.

XI. In the case of any parish or place wherein there is no parish church nor any person known to be or claiming to be the patron of the ancient church or advowson, if any, of such parish or place, then for all purposes of forming an ecclesiastical district or ecclesiastical districts either wholly or partly out of such parish or place under the powers of the Church Building Acts or New Parishes Acts, or any other Act or Acts of Parliament now or hereafter in force, such parish or place shall be deemed to be and shall be treated for such purposes as an extra-parochial place, and in any case in which notice shall be required to be sent or given to a patron under the provisions of such Acts or any of them it shall be sufficient with respect to such parish or place so to be treated as an extra-parochial place as aforesaid to send or give such notice to the bishop of the diocese alone, and such notice when so sent or given shall be held to be a full compliance with the requirements of the said Acts or Act in respect of such notice: Provided always, that

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nothing herein contained shall affect the rights of the Crown, if any, with regard to any such parish or place.

Contract for the assignment of patronage under the Church Building and New Parishes Acts not to be simoniacal.

XII. No contract, agreement, or arrangement under any of the provisions of the Church Building Acts or New Parishes Acts relative to the exercise by, or the vesting in, or the assignment to any body or person of the right of patronage of or presentation to any church or chapel, in consideration of such body or person erecting or enlarging or contributing towards or procuring or agreeing to procure the erecting or the enlarging of such church, or permanently endowing or contributing towards or procuring or agreeing to procure the permanent endowment of such church or of its incumbent or minister, shall be deemed corrupt or simoniacal.[1]

Certain assignments of patronage under Church Building and New Parishes Acts to be valid, and none of the penalties against simony to attach.

XIII. Every instrument whereby any declaration or assignment or other disposition of any right of patronage or of presentation to any church or chapel has already been made, or shall hereafter be made under any of the provisions of the said Acts, or in pursuance of any such contract or agreement as aforesaid, shall be deemed to have been and shall be good; and every presentation, institution, or induction which has already taken place, or shall hereafter take place in pursuance thereof, or of any such contract, agreement, or arrangement as aforesaid, shall be deemed to have been and shall be good, and no penalty or disability under either the canon law or the common or statute law shall be deemed to have been or shall be thereby incurred.

Meaning of "church" and "chapel."

XIV. The words church and chapel in this Act shall apply only to churches and chapels of the Established Church of England.

[1] This section was inserted on the recommendation of the author of this book. See Chap. IV. section (e).

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APPENDIX A, No. 2.—TABULAR VIEW of the Ecclesiastical Acts and New

Acts and Sections.	How formed.	Consents necessary.	Endowments.	Offices of the Church, and Fees.
(A) UNDER THE CHURCH BUILDING ACTS (SEE CHAP. IV.)—				
1. DISTINCT AND SEPARATE PARISHES :				
58 Geo. 3, cap. 45, sect. 16 ; 1 & 2 Vict. cap. 107, sect. 12.	—By scheme and Order in Council.	—The Bishop and Patron.	— A portion of the tithes glebe, etc., belonging to the old church.	—No offices of the Church (except burials by the incumbent of the mother church) can be performed until an avoidance of the motherchurch, when all the offices may be performed, and the fees received, by the incumbent of the new division (58 Geo. 3, cap. 45, sects. 28, 29).
2. DISTRICT PARISHES : (a)				
58 Geo. 3, cap. 45, sect. 21 ; 1 & 2 Vict. cap. 107, sect. 12.	—By scheme and Order in Council.	—The Bishop.	— The permanent endowments of the old church are not affected by the division.	—Not any offices (except burials by the incumbent of the mother church) can be performed until the avoidance of the mother church, or the resignation of the new church by the incumbent of the old church, when all the offices may be performed, and the fees received, by the incumbent of the district parish, unless reserved to the incumbent of the mother church (3 Geo. 4, cap. 72, sect. 12).

(a) These are termed (58 Geo. 3, c. 45, s. 24), "separate and distinct District of raising their own church-rate, and (59 Geo. 3, c. 134, s. 19) "Parishes for ecclesiastical purposes."

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Divisions of Parishes formed under the Church Building Parishes Acts, etc.

Pew Rents.	Relation of the New to the Old Church.	Patronage of the New Church and Division.	Repairs of New Church.
—If the Commissioners make a grant in aid of building the new church, they can fix a scale of pew-rents for it (58 Geo. 3, cap. 45, sects. 63, 64).	—By 59 Geo. 3, cap. 134, sect. 12, the church becomes immediately after consecration a distinct benefice, and the two churches are held together as one benefice by the incumbent of the mother church. Upon the death, resignation, or other avoidance of the existing incumbent of the parish divided (58 Geo. 3, cap. 45, sect. 16) the new division becomes a rectory, vicarage, or donative, according to the character of the church of the original parish.	—Belongs to the patron of the old church (59 Geo. 3, cap. 134, sect. 13), unless vested elsewhere; and if the division be entirely formed out of an extra-parochial place, then the patronage belongs to the bishop.	—May be provided for by rates levied on the inhabitants of the new division (58 Geo. 3, cap. 45, sects. 70, 71; 31 & 32 Vict c. 109, sect. 6).
— If the Commissioners make a grant in aid of building the new church, they can fix a scale of pew-rents for it (58 Geo. 3, cap. 45, sects. 63, 64).	—Until an avoidance of the old church, the district parish is served by a licensed stipendiary curate nominated by the incumbent of the old church (59 Geo. 3, cap. 134, sect. 12); the license of the curate, however, remains in force, until revoked by the Bishop. These churches become, when consecrated, distinct benefices for all ecclesiastical purposes (ibid.). On avoidance of the mother church they become benefices presentative (58 G. 3, c. 45 s. 25).	—Belongs to the patron of the old church (58 Geo. 3, cap. 45, sect. 67; 1 & 2 Vict. cap. 107, sect. 13; 2 & 3 Vict. cap. 49, sect. 11), unless vested elsewhere; and if the division be entirely formed out of an extra-parochial place, then the patronage belongs to the bishop.	—May be provided for by church-rates levied on the inhabitants of the district parish, pursuant to the 31 & 32 Vict. c. 109, sect. 6).

Parishes;" in sections 70 & 71, "distinct and separate Parishes for the purpose siastical purposes."

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Acts and Sections.	How formed.	Consents necessary.	Endowments.	Offices of the Church, and Fees.
3. Consolidated Chapelries:				
8 & 9 Vict. cap. 70, sect. 9; 14 & 15 Vict. cap. 97, sects. 19 & 20; 1 & 2 Vict. cap. 107, sect. 14; 59 Geo. 3, cap. 134, sect. 6.	—By scheme and Order in Council.	—The Bishop and the patrons or a majority of the patrons of the several parishes affected by the division.	—The permanent endowments of the parishes, etc., out of which the Consolidated Chapelry is taken are not affected by the division; but the rector or vicar of any such parish may annex tithes to the new church, or effect a rent-charge on his living in favour of the minister of such church (1 & 2 Will. 4, cap. 45, sect. 21; and 1 & 2 Vict. cap. 107, sect. 14).	—The offices of the Church may, upon the formation of the consolidated chapelry, be performed in the church thereof without any order; the fees being reserved to the incumbents of the several original parishes, etc., during their respective incumbencies, or until avoidance, or relinquishment of the fees (8 & 9 Vict. cap. 70, sects. 10, 14, 15, *i.e.*, as regards those formed after this Act passed).
4. District Chapelries:				
59 Geo. 3, cap. 134, sect. 16; 1 & 2 Vict. cap. 107, sect. 12; 2 & 3 Vict. cap. 49, sect. 3; 3 & 4 Vict. cap. 60, sect. 1.	—By scheme and Order in Council.	—The Bishop.	—The permanent endowments of the parish, etc., out of which the district chapelry is taken are not affected by the division, but the rector or vicar of any such parish may annex tithes to the new church, or effect a rent-charge on his living in favour of the minister of such division (1 & 2 Will. 4, cap. 45, sect. 21).	—The Commissioners, with the Bishop's consent only, determine whether all or any of the offices of the Church may be performed in the new church, and how the fees should be appropriated until the avoidance of the mother church or relinquishment of the fees by the incumbent of the mother church. Generally all the offices are authorized and the fees go to the incumbent (59 Geo. 3, cap. 134, sect. 16).

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Pew Rents.	Relation of the New to the Old Church.	Patronage of the New Church and Division.	Repairs of New Church
—If the Commissioners make a grant in aid of building the new church, they can fix a scale of pew-rents for it (58 Geo. 3, cap. 45, sects. 63, 64).	—The minister of the new church is independent, except as to the fees he is to account for, as mentioned in the Fifth Column (8 & 9 Vict. cap. 70, sect. 9).	—This is settled by the patrons or a majority of the patrons of the several parishes, etc., affected (8 & 9 Vict. cap. 70, sect. 9).	—May be provided for by church-rates levied on the inhabitants of the district, pursuant to the 31 and 32 Vict. cap. 109, sect. 6.
—If the Commissioners make a grant in aid of building the new church, they can fix a scale of pew-rents for it (58 Geo. 3, cap. 45, sects. 63, 64).	—The minister of the district is independent, except as to any fees he may have to account for to the old church by the Order in Council assigning the district (8 & 9 Vict. cap. 70, sect. 17).	—Unless vested elsewhere, the patronage belongs to the incumbent of the mother church (8 & 9 Vict. cap. 70, sect. 23). But if the division be altogether out of an extra - parochial place, then the patronage belongs to the bishop (1 & 2 Vict. cap. 107, sect. 15).	May be provided for by church-rates levied on the inhabitants of the district, pursuant to the 31 & 32 Vict. cap. 109, sect. 6.

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Acts and Sections.	How formed.	Consents necessary.	Endowments.	Offices of the Church, and Fees.
5. Particular and Patronage Districts:				
1 & 2 Will. 4, cap. 31 sects. 10, 11; 14 & 15 Vict. cap. 97, sects. 14, 16, 21.	— By the Ecclesiastical Commissioners, under their Common Seal.	—The Bishop, the Patron, and Incumbent of the mother church having notice and an option to build and endow the church.	—A permanent endowment to the satisfaction of the Commissioners is required (14 & 15 Vict. cap. 97, sect. 7; 1 & 2 Will. 4, cap. 38, sect. 5), 1,000*l.* at least, at 40*l.* a year rentcharge.	—The Commissioners and the Bishop determine the offices. The fees are reserved until avoidance to the incumbent of the mother parish; but he may, with the consent of the patron, voluntarily surrender the same (1 & 2 Will. 4, cap. 38, sec 14; 3 & 4 Vict. cap. 60, sect. 13; 7 & 8 Vict. cap. 56, sects. 1, 2; 14 & 15 Vict cap. 67, sect. 18).
6. Endowed Chapelry made a Separate Parish:				
1 & 2 Will. 4, cap. 38, sect. 23; 1 & 2 Vict. cap. 107, sect. 7.	—By the Bishop, under his Hand and Seal.	—The Patron and Incumbent of the Parish.	—An endowment satisfactory to the Bishop is required. The endowments of original parish not affected.	—All the offices of the Church may be performed when the separation takes place. The fees then belong to the incumbent of the new and separate parish.
(B) UNDER THE PLURALITY AND RESIDENCE ACT—				
1. Separate or Disunited Benefices:				
1 & 2 Vict. c. 106, sect. 26; and 2 & 3 Vict. cap. 49, sects. 6, 7, 8.	—By the scheme of the Archbishop and Order in Council.	— Archbishop, Bishop, patrons, and incumbents of the parishes affected by the scheme. If the incumbents do not consent, the division does not take place till the avoidance of the survivor of them.	—A portion of glebe, tithes, etc., may be given up under the scheme.	—The fees, etc., for offices may be given up under the scheme.

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Pew Rents.	Relation of the New to the Old Church.	Patronage of the New Church and Division.	Repairs of New Church.
—The Commissioners may fix or allow the Bishop and patron or trustees to fix pew rents.	—The minister of the district is independent of the mother church, except as to the fees, dues, etc., which may have been reserved (2 & 3 Vict. cap. 49, sect. 10).	—The patronage is vested in the body or person building and endowing, or their nominees (14 & 15 Vict. cap. 97, sect. 11).	—A repair fund is always provided for the church. The inhabitants may levy church-rates pursuant to the 31 & 32 Vict. c. 109, sec. 6.
—No express provision.	—The separation does not, if the incumbent withhold his consent, take effect until the next avoidance of the parish church. When the separation does take effect the new church is a separate and independent benefice.	—The Bishop and the patron may agree as to the patronage. If the incumbent refuse his consent to such agreement, it takes effect upon the next avoidance.	—The same as in case of an ancient parish church.
—Arranged under the scheme.	— The new church becomes a distinct benefice, and the district a separate parish for ecclesiastical purposes immediately on the Order in Council being gazetted, if the incumbents consent; if not, then upon the avoidance.	—Arranged under the scheme.	—Arranged under the scheme, but regulated by the 31 and 32 Vict. cap. 109.

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Acts and Sections.	How formed.	Consents necessary.	Endowments.	Offices of the Church, and Fees.

(C) UNDER THE NEW PARISHES ACTS—

1. Peel Parishes and Districts:

6 & 7 Vict. cap. 37, sects. 9, 11, 12; 7 & 8 Vict. cap. 94, sect. 10; 19 & 20 Vict. cap. 104, sects. 1, 2, 3, 14.	—By scheme and Order in Council.	—The Bishop: but a copy of the scheme is sent to the patron and incumbent (6 & 7 Vict. cap. 37, sect. 9).	—No endowment is necessary, provided an adequate maintenance from other sources is reasonably to be expected (19 & 20 Vict. cap. 104, sect. 3). If not, then an endowment is required of at least 100*l.* a year to be increased to 150*l.* on its becoming a new parish (6 & 7 Vict. cap. 37, sect. 9).	—Unless or until a church is consecrated in and for the district, the incumbent performs only such pastoral duties and offices as are specified in his license, viz., churchings and baptisms; no fee can be taken for baptisms, and for churchings only the fees specified in his license (6 & 7 Vict. cap. 37, sect. 13). No burials or marriages can be performed (sect. 11).

2. New Parishes:

6 & 7 Vict. cap. 37, sect. 14; 19 & 20 Vict. cap. 104, sects. 1, 2, 14, 15.	—By scheme and Order in Council; but in case of an existing district other than a Peel district, wherever the incumbent has a right to perform, and to receive the fees for, the offices of the Church (other than for burials), thereupon the district becomes a new parish without any consents.*	—The Bishop's consent in the case of a district formed under 19 & 20 Vict. cap. 104, sect. 1, is necessary; but no consents are requisite where an existing district becomes a new parish as mentioned in Column 2.	—Optional with the Ecclesiastical Commissioners to require an endowment or not. In existing districts other than a Peel district, no additional endowment is required.	—The incumbent and the parish are ecclesiastically independent of the mother parish, and the incumbent is exclusively entitled to perform all the offices of the Church and to take all the fees (19 & 20 Vict. cap. 104, sect. 15).

* But this does not apply to those Patronage Districts in which the right to

N.B. These Tabular Statements will be found to have been materially altered

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Pew Rents.	Relation of the New to the Old Church.	Patronage of the New Church and Division.	Repairs of New Church.
—The Ecclesiastical Commissioners, with the consent of the Bishop, may authorize pew-rents (if sufficient funds cannot be provided from other sources) in districts formed after the 29th July, 1856 (19 & 20 Vict. cap. 104, sect. 6; 6 & 7 Vict. cap. 37, sect. 24.)	—The incumbent of the district is a perpetual curate, but is not otherwise independent unless or until a church is consecrated in and for the district, when it becomes a new parish (6 & 7 Vict. cap. 37, sects. 12, 14).	—The Commissioners may assign the patronage, either in perpetuity or otherwise, to contributors to the endowment, or to the incumbent of the mother parish. In the meantime the Crown and the Bishop nominate alternately (6 & 7 Vict. cap. 37, sect. 20; 19 & 20 Vict. cap. 104, sects. 16, 23).	—Immediately a church is built in the district and consecrated, the district becomes a new parish, and the liabilities to repair are the same as in an ancient parish church, and there is no liability to repair the mother church.
—The Ecclesiastical Commissioners may authorize pew-rents in any new parish formed since July 29th, 1856.	—The incumbent is the perpetual curate, and has exclusive cure of souls, and is ecclesiastically independent of the incumbent of the mother-parish (19 and 20 Vict. cap. 104, sect. 15).	—The Ecclesiastical Commissioners may (except in existing districts of which the patronage is vested elsewhere) assign the patronage, either in perpetuity or otherwise, to contributors to the endowment or to the incumbent of the mother church. In the interim the Crown and the Bishop nominate alternately (6 and 7 Vict. cap. 37, sect. 20; 19 & 20 Vict. cap. 104, sects. 16—23).	—The new parish is in the same position as to its own church-rate as an ancient parish, and is not liable to rates for the mother church (19 and 20 Vict. cap. 104, sect. 15).

solemnize marriages is only acquired by a *revocable* license (Queen *v.* Perry, *supra*).

in this Edition. See Appendix H, No. 2.

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The Church Building Acts also authorize the—

1. Annexation of Extra-parochial Places to distinct and separate Parishes, District Parishes, or District Chapelries:
2. Building of new Churches without Districts:
3. Vesting of the Patronage of Churches for Forty Years or Two Turns in Householders or Parishioners having built and endowed the same:
4. Vesting of the Patronage in perpetuity of Churches in the Body or Person building and endowing the same:
5. Formation of Parishes, Chapelries, or Districts out of Parishes regulated by Local Acts:
6. Making Churches or Chapels Parish Churches, the Parish Churches becoming District Churches or Chapels of Ease:
7. Pulling down of Parish Churches, and making Churches Parish Churches:
8. Transfer to new Churches of Endowments belonging to the Incumbents of Cathedral Churches, Parts of which have been used as Parochial Churches:
9. Conversion of Vicarages into Rectories.

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Appendix B.

ANNUAL RETURN OF RATES.

23 & 24 Vict. c. 51.

An Act to provide for an Annual Return of Rates, Taxes, Tolls, and Dues levied for Local Purposes in England. [23d July, 1860.]

By the 1st section it is provided that the clerk to any corporation, justices, commissioners, district or other board, vestry, inspectors, trustees, or other body or persons authorized to levy, or to order to be levied, any of the rates, taxes, tolls or dues, mentioned in the schedule to the Act, shall make a return of the sums levied or received by or in respect of such rates, etc., and of the expenditure thereof, to one of Her Majesty's principal Secretaries of State, in the month of June in every year.

By section 2 it is provided that such return shall be made for the latest period of twelve months preceding the month of June in each year for which the accounts of the corporation, &c., shall be made up, and shall show the amounts levied and expended respectively, with such other particulars, and in such form, as shall from time to time be ordered by such Secretary of State.

By section 3 it is (among other things) provided, that where any such rates, &c., are levied and expended, or to be accounted for by churchwardens, chapelwardens, or any officers or persons not authorized to act as a board, such returns as thereinbefore

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mentioned in respect of such rates, &c., and the expenditure thereof, shall be made by such churchwardens, chapelwardens, &c., and they shall be severally liable in respect of any neglect to make the same.

By section 4 any clerk, treasurer, churchwarden, officer, or other person required as aforesaid to make such return, who neglects so to do in the month of June in any year, is made liable to a penalty not exceeding 20*l.* for every such offence, to be recoverable on summary conviction thereof before two justices.

Among the rates mentioned in the schedule are "church-rates and chapel-rates, whether made by the common law, or under the Church Building Acts, or under any other Act of Parliament."

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RECOVERY OF RATES.

25 & 26 Vict. c. 82.

An Act for the more Economical Recovery of Poor Rates and other Local Rates and Taxes.

[7th August, 1862.]

Whereas it is expedient to provide for the more economical Recovery of Poor Rates and other Local Rates and Taxes: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Consolidation of Proceedings for the Recovery of Rates.

1. Where any Number of Local Rates[1] and Taxes, whether of the same or of different Kinds, are due from the same Person, the Rates and Taxes so due may be included in the same Information, Complaint, Summons, Order, Warrant, or other Document required by Law to be laid before Justices or to be issued by Justices, and every such Document as aforesaid shall, as respects each Rate or Tax comprised in it, be construed as a Separate Document, and its Invalidity as respects any one Rate or Tax shall not affect its Validity as respects any other Rate or Tax comprised in it:

No Costs shall be allowed in respect of several Informations, Complaints, Summonses, Orders, Warrants, or other such Documents as aforesaid, in Cases

[1] This, of course, includes Church-rates.

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where, in the Opinion of the Justices or Court having Jurisdiction over the said Costs, One Information, Complaint, Summons, Order, Warrant, or other Document as aforesaid might have sufficed, regard being had to the Provisions of this Act.

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ABOLITION OF COMPULSORY CHURCH-RATES.

31 & 32 Vict. c. 109.

An Act for the Abolition of Compulsory Church-Rates.
[31st July, 1868.]

Whereas Church-Rates have for some Years ceased to be made or collected in many Parishes by reason of the Opposition thereto, and in many other Parishes where Church-Rates have been made the levying thereof has given rise to Litigation and Ill-feeling:

And whereas it is expedient that the Power to compel Payment of Church-Rates by any Legal Process should be abolished:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—

Compulsory Church-rates abolished.

I. From and after the passing of this Act no Suit shall be instituted or Proceeding taken in any Ecclesiastical or other Court, or before any Justice or Magistrate, to enforce or compel the Payment of any Church-Rate made in any Part of England or Wales.

Saving of rates called Church-rates, but applicable to secular purposes.

II. Where in pursuance of any General or Local Act any Rate may be made and levied which is applicable Partly to Ecclesiastical Purposes and Partly to other Purposes, such Rate shall be made, levied, and applied for such last-mentioned Purposes only, and so far as it is applicable to such Purposes shall be deemed to be a Separate Rate, and not a Church-Rate, and shall not be affected by this Act.

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Where in pursuance of any Act of Parliament a Mixed Fund, arising Partly from Rates affected by this Act and Partly from other Sources, is directed to be applied to Purposes some of which are Ecclesiastical Purposes, the Portion of such Fund which is derived from such other Sources shall be henceforth primarily applicable to such of the said Purposes as are Ecclesiastical.

Provision where money is due on security of such rates.

III. In any Parish where a Sum of Money is at the Time of the Passing of this Act due on the Security of Church-Rates, or of Rates in the nature of Church-Rates, to be made or levied in such Parish under the Provisions of any Act of Parliament, or where any Money in the name of Church-Rate is ordered to be raised under any such Provisions, such Rates may still be made and levied, and the Payment thereof Enforced by Process of Law, pursuant to such Provisions, for the Purpose of paying off the Money so due, or paying the Money so ordered to be raised, and the Costs incidental thereto, but not otherwise, until the same shall have been Liquidated: Provided that the Accounts of the Churchwardens of such Parish in reference to the Receipt and Expenditure of the Moneys Levied under such Acts shall be Audited Annually by the Auditor of the Poor Law Union within whose District such Parish shall be situate, unless another mode of Audit is provided by Act of Parliament.

Provision as to Church-rates already made.

IV. Any Church-Rate, or Rate in the nature of Church-Rate made at any Time before the Passing of this Act, may be Collected and Recovered in the same way as if this Act had not been passed.

Not to affect enactments in local Acts, etc., where rates are made for purposes herein named.

V. This Act shall not affect any Enactment in any Private or Local Act of Parliament under the Authority of which Church-Rates may be made or levied in lieu of, or in consideration of the Extinguishment or of the Appropriation to any other Purpose of, any Tithes, Customary Payments, or other Property or

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Charge upon Property, which Tithes, Payments, Property, or Charge, previously to the passing of such Act, had been appropriated by Law to Ecclesiastical Purposes as defined by this Act, or in consideration of the Abolition of Tithes in any Place, or upon any Contract made, or for good or valuable Consideration given, and every such Enactment shall continue in force in the same manner as if this Act had not passed.

Act not to affect Vestries, etc.

VI. This Act shall not affect Vestries, or the Making, Assessing, Receiving, or otherwise dealing with any Church-Rate, save in so far as relates to the Recovery thereof; but subject to the Provisions hereinbefore contained, whensoever any Ecclesiastical District having within its limits a consecrated Church in use for the Purposes of Divine Worship shall have been legally constituted out of any Parish or Parishes, and whether such District shall or shall not be a separate and distinct Parish, the Inhabitants of such District shall not be entitled to Vote for or in reference to a Church-Rate or the Expenditure thereof at any Vestry Meeting of the Parish or Parishes out of which the said District is formed, nor shall they be Assessed to any Rate made in relation to the Parish Church of the said Parish or Parishes; but such Inhabitants may assemble in Vestry, and, subject to the Provisions of this Act, may make and assess a Rate in relation to the Church of their own District in like manner as if such Church were the Church of an ancient Parish: Provided that nothing in this Act contained shall affect any right of Burial to which the Inhabitants of the District may be entitled in the Churchyard of the mother Church.

Power to inhabitants of separate district to make separate rate.

Trustees and others under Incapacity may subscribe to voluntary rate.

VII. It shall be lawful for all Bodies Corporate, Trustees, Guardians, and Committees who or whose Cestuisque Trust are in the occupation of any Lands, Houses, or Tenements, to pay, if they think fit, any Church-Rate made in respect of such Property, although the Payment of the same may not be enforce-

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able after the passing of this Act, and the same shall be allowed to them in any Accounts to be rendered by them respectively.

Regulations as to persons refusing to pay Church-rates.

VIII. No Person who makes Default in paying the amount of a Church-Rate for which he is rated shall be entitled to inquire into, or object to, or vote in respect of the Expenditure of the Moneys arising from such Church-Rate; and if the Occupier of any Premises shall make default for One Month after demand in Payment of any Church-Rate for which he is rated, the Owner shall be entitled to pay the same, and shall thereupon be entitled, until the next succeeding Church-Rate is made, to stand for all purposes relating to Church-Rates (including the attending at Vestries and voting thereat) in the place in which such Occupier would have stood.

Power to appoint

IX. A Body of Trustees may be appointed in any Parish[1] for the Purpose of accepting, by Bequest, Donation, Contract, or otherwise, and of holding any Contributions which may be given to them for Ecclesiastical Purposes in the Parish.

Church Trustees.

The Trustees shall consist of the Incumbent and of Two Householders or Owners or Occupiers of Land in the Parish, to be chosen in the First Instance, and also from Time to Time, on any Vacancy in the Office by Death, Incapacity, or Resignation, One by the Patron, and the other by the Bishop of the Diocese in which the Parish is situate.

The Trustees shall be a Body Corporate by the Name of the Church Trustees of the Parish to which they belong, having a Perpetual Succession and a Common Seal, with Power to sue and be sued in their Corporate Name.

[1] It may be observed that the word parish does not include every district entitled to make a separate Church-rate under section 6. See definition in next section.

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The Trustees may from Time to Time, as Circumstances may require, Pay over to the Churchwardens, to be applied by them either to the General Ecclesiastical Purposes of the Parish, or to any Specific Ecclesiastical Purposes of the Parish, any Funds in their Hands, and the Funds so Paid over may be applied to such Purposes, and shall not be applied to any other Purpose: Provided always, that no Power shall be thereby conferred on the Churchwardens to take Order with Regard to the Ecclesiastical Purposes of the Parish further or otherwise than they are now by Law entitled to do: Provided also, that due Regard shall be had to the Directions of the Donors of Funds contributed for any Special Ecclesiastical Purposes; and, subject as aforesaid,

The Trustees may Invest in Government or Real Securities any Funds in their Hands, and Accumulate the Income thereof, or otherwise Deal with such Funds as they think expedient, subject to the Provisions of this Act.

The Incumbent shall be the Chairman of the Trustees.

The Trustees shall once at the least in every Year lay before the Vestry an Account of their Receipts and Expenditure during the preceding Year, and of the Mode in which such Receipts have been derived and Expenditure incurred, together with a Statement of the Amount, if any, of Funds remaining in their Hands at the Date of such Account.

Definition of "Ecclesiastical Purposes," "Church-rate," and "Parish."

X. In this Act "Ecclesiastical Purposes" shall mean the Building, Rebuilding, Enlargement, and Repair of any Church or Chapel, and any Purpose to which by Common or Ecclesiastical Law a Church-rate is applicable, or any of such Purposes.

"Church-Rate" shall mean any Rate for Ecclesiastical Purposes as hereinbefore defined.

"Parish" shall mean any Parish, Ecclesiastical

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District, Chapelry, or Place within the Limits of which any Person has the exclusive Cure of Souls.

Short title. XI. This Act may be cited as "The Compulsory Church-Rate Abolition Act, 1868."

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APPENDIX C.

CHURCH DISCIPLINE ACT.

3D AND 4TH VICT. C. 86.

An Act for better enforcing Church Discipline.
[7th August, 1840.]

WHEREAS the Manner of proceeding in Causes for the Correction of Clerks requires Amendment: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That an Act passed in the First Year of the Reign of King *Henry* the Seventh, intituled *An Act for Bishops to punish Priests and other Religious Men for dishonest Lives*, shall be repealed.

Repeal of 1 Hy. 7, c. 4.

2. And be it enacted, That, unless it shall otherwise appear from the Context, the Term "Preferment," when used in this Act, shall be construed to comprehend every Deanery, Archdeaconry, Prebend, Canonry, Office of Minor Canon, Priest Vicar, or Vicar Choral in Holy Orders, and every Precentorship, Treasurership, Sub-Deanery, Chancellorship of the Church, and other Dignity and Office in any Cathedral or Collegiate Church, and every Mastership, Wardenship, and Fellowship in any Collegiate Church, and all Benefices with Cure of Souls, comprehending therein all Parishes, Perpetual Curacies, Donatives, endowed Public Chapels, Parochial Chapelries, and Chapelries or Districts belonging to or reputed to belong, or

Definition of the Terms "Preferment," "Bishop," "Archbishop," and "Diocese."

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annexed or reputed to be annexed, to any Church or Chapel,[1] and every Curacy, Lectureship, Readership, Chaplaincy, Office, or Place which requires the Discharge of any Spiritual Duty, and whether the same be or be not within any exempt or peculiar Jurisdiction; and the Word "Bishop," when used in this Act, shall be construed to comprehend "Archbishop;" and the word "Diocese," when used in this Act, shall be construed to comprehend all Places to which the Jurisdiction of any Bishop extends under and for the Purposes of an Act passed in the Second year of the Reign of Her present Majesty, intituled *An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy.*

1 and 2 Vict. c. 106.

Bishop may issue a Commission of Inquiry.

8. And be it enacted, That in every Case of any Clerk in Holy Orders of the United Church of *England* and *Ireland* who may be charged with any Offence against the Laws Ecclesiastical, or concerning whom there may exist Scandal or evil Report,[2] as having offended against the said Laws, it shall be lawful for the Bishop of the Diocese within which the Offence is alleged or reported to have been committed, on the Application of any Party complaining thereof, or if he shall think fit of his own mere Motion, to issue a Commission under his Hand and Seal to Five Persons, of whom one shall be his Vicar-General, or an Archdeacon or Rural Dean within the Diocese, for the Purpose of making Inquiry as to the Grounds of such Charge or Report: Provided always, that Notice of the Intention to issue such Commission under the Hand of the Bishop, containing an Intimation of the Nature of the Offence, together with the Names, Addition, and Resi-

Notice to be previously given.

[1] This term will include unconsecrated proprietary chapels. (See Barnes *v.* Shore, 1 Rob. 382; Freeland *v.* Neale, 1 Rob. 643.)

[2] And this although the offence be criminal and cognizable at Common Law (3 Curt. 822).

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dence of the Party on whose Application or Motion such Commission shall be about to issue, shall be sent by the Bishop to the Party accused Fourteen Days at least before such Commission shall issue.[1]

Proceedings of the Commissioners.

4. And be it enacted, That it shall be lawful for the said Commissioners, or any Three of them, to examine upon Oath, or upon solemn Affirmation in Cases where an Affirmation or Declaration is allowed by Law instead of an Oath, which Oath or Affirmation or Declaration respectively shall be administered by them to all Witnesses who shall be tendered to them for Examination, as well by any Party alleging the Truth of the Charge or Report as by the Party accused, and to all Witnesses whom they may deem it necessary to summon for the Purpose of fully prosecuting the Inquiry, and ascertaining whether there be sufficient *prima facie* Ground for instituting further Proceedings; and Notice of the Time when and Place where every such Meeting of the Commissioners shall be holden shall be given in Writing under the Hand of One of the said Commissioners to the Party accused Seven Days at least before the Meeting: and it shall be lawful for the Party accused, or his Agent, to attend the Proceedings of the Commission, and to examine any of the Witnesses; and all such preliminary Proceedings shall be public, unless, on the special Application of the Party accused, the Commissioners shall direct that the same or any Part thereof shall be private; and when such preliminary Proceedings, whether public or private, shall have been closed, One of the said Commissioners shall, after due Consideration of the Depositions taken before them, openly and publicly declare the Opinion of the Majority of the Commissioners

[1] It has been decided that giving notice under this section does not preclude the bishop from subsequently availing himself of the provisions of the 13th section (Sanders *v.* Head, 3 Curt. Ecc. R. 47; 4 Moore, P. C. C. 186).

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present at such Inquiry, whether there be or be not sufficient *prima facie* Ground for instituting further Proceedings.

Report of the Commissioners.

5. And be it enacted, That the said Commissioners, or any Three of them, shall transmit to the Bishop under their Hands and Seals the Depositions of Witnesses taken before them, and also a Report of the Opinion of the Majority of the Commissioners present at such Inquiry, whether or not there be sufficient *prima facie* Ground for instituting Proceedings against the Party accused; and such Report shall be filed in the Registry of the Diocese; and that if the Party accused shall hold any Preferment in any other Diocese or Dioceses, the Bishop to whom the Report shall be made shall transmit a Copy thereof, and of the Depositions, to the Bishop or Bishops of such other Diocese or Dioceses, and shall also, upon the Application of the Party accused, cause to be delivered to such Party a Copy of the said Report and of the Depositions, on Payment of a reasonable Sum for the same, not exceeding Twopence for each Folio of Ninety Words.[1]

Bishop may pronounce Sentence, by Consent, without further Proceedings.

6. And be it enacted, That in all Cases where Proceedings shall have been commenced under this Act against any such Clerk, it shall be lawful for the Bishop of any Diocese within which such Clerk may hold any Preferment, with the Consent of such Clerk and of the Party complaining, if any, first obtained in Writing, to pronounce, without any further Proceedings, such sentence as the said Bishop shall think fit, not exceeding the sentence which might be pronounced in due Course of Law; and all such Sentences shall be good and effectual in Law as if pronounced after a Hearing according to the Provisions of this Act, and may be enforced by the like Means.

[1] This extends only to documents actually produced before the Commissioners (Farnell *v.* Craig, 5 Ecc. & Mar. cases, 176).

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Articles and Depositions to be filed.

7. And be it enacted, That if the Commissioners shall report that there is sufficient *prima facie* Ground for instituting Proceedings, and if the Bishop of any Diocese within which the Party accused may hold any Preferment, or the Party complaining, shall thereupon think fit to proceed against the Party accused, Articles shall be drawn up, and, when approved and signed by an Advocate practising in *Doctors' Commons*, shall, together with a Copy of the Depositions taken by the Commissioners, be filed in the Registry of the Diocese of such last-mentioned Bishop; and any such Party, or any Person on his behalf, shall be entitled to inspect without Fee such Copies, and to require and have, on Demand, from the Registrar (who is hereby required to deliver the same), Copies of such Depositions, on Payment of a reasonable Sum for the same, not exceeding Twopence for each Folio of Ninety Words.

Service of Copy of the Articles on the Party.

8. And be it enacted, That a Copy of the Articles so filed shall be forthwith served upon the Party accused by personally delivering the same to him, or by leaving the same at the Residence House belonging to any Preferment holden by him; or if there be no such House, then at his usual or last-known Place of Residence; and it shall not be lawful to proceed upon any such Articles until after the Expiration of Fourteen Days after the Day on which such Copy shall have been so served.

Bishop may require the Party to appear before him

9. And be it enacted, That it shall be lawful for the said last-mentioned Bishop, by Writing under his Hand, to require the Party to appear, either in Person or by his Agent duly appointed, as to the same Party may seem fit, before him, at any Place within the Diocese, and at any Time after the Expiration of the said Fourteen Days, and to make Answer to the said Articles within such Time as to the Bishop shall seem reasonable; and if the Party shall appear, and by his Answer admit the Truth of the Articles, the Bishop, or his

and may pronounce

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Judgment on Admission.

Commissary specially appointed for that Purpose, shall forthwith proceed to pronounce Sentence thereupon according to the Ecclesiastical Law.

How Notice and Requisition to be served.

10. And be it further enacted, That every Notice and Requisition to be given or made in pursuance of this Act shall be served on the Party to whom the same respectively relate, in the same Manner as is hereby directed with respect to the Service of a Copy of the Articles on the Party accused.

Proceeding on a Hearing before the Bishop.

11. And be it enacted, That if the Party accused shall refuse or neglect to appear and make Answer to the said Articles, or shall appear and make any Answer to the said Articles other than an unqualified Admission of the Truth thereof, the Bishop shall proceed to hear the Cause, with the Assistance of Three Assessors, to be nominated by the Bishop, One of whom shall be an Advocate who shall have practised not less than Five Years in the Court of the Archbishop of the Province, or a Serjeant at Law, or a Barrister of not less than Seven Years' standing; and another shall be the Dean of his Cathedral Church, or of one of his Cathedral Churches, or one of his Archdeacons, or his Chancellor; and upon the Hearing of such Cause the Bishop shall determine the same, and pronounce Sentence thereupon, according to the Ecclesiastical Law.

Sentence of Bishop to be effectual in Law.

12. And be it enacted, That all Sentences which shall be pronounced by any Bishop, or his Commissary, in pursuance of this Act, shall be good and effectual in Law, and such Sentences may be enforced by the like Means as a Sentence pronounced by an Ecclesiastical Court of competent Jurisdiction.

Bishop may send the Cause to the Court of Appeal of the Province.

13. Provided always, and be it enacted, That it shall be lawful for the Bishop of any Diocese within which any such Clerk shall hold any Preferment, or if he hold no Preferment, then for the Bishop of the Diocese within which the Offence is alleged to have been committed, in any Case, if he shall think fit,

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either in the first Instance, or after the Commissioners shall have reported that there is sufficient *prima facie* Ground for instituting Proceedings, and before the filing of the Articles, but not afterwards, to send the Case by Letters of Request to the Court of Appeal of the Province,[1] to be there heard and determined according to the Law and Practice of such Court; Provided always, that the Judge of the said Court may, and he is hereby authorized and empowered from Time to Time to make any Order or Orders of Court for the Purpose of expediting such Suits or otherwise improving the Practice of the said Court, and from Time to Time to alter and revoke the same: Provided also, that there shall be no Appeal from any Interlocutory Decree or Order not having the Force or Effect of a definitive Sentence, and thereby ending the Suit in the Court of Appeal of the Province, save by the Permission of the Judge of such Court.

Judge of the Court may make Orders for Expediting such Suits.

No Appeal from Interlocutory Degree.

14. And be it enacted, That in every Case in which, from the Nature of the Offence charged, it shall appear to any Bishop within whose Diocese the Party accused may hold any Preferment, that great Scandal is likely to arise from the Party accused continuing to perform the Services of the Church while such Charge is under Investigation, or that his Ministration will be useless while such Charge is pending, it shall be lawful for the Bishop to cause a Notice to be served on such Party at the same Time with the Service of a Copy of the Articles aforesaid, or at any Time pending any Proceedings before the Bishop or in any Ecclesiastical Court, inhibiting the said Party from performing any Services of the Church within such Diocese from and after the expiration of Fourteen Days from the Service of such Notice, and until Sentence shall have been given in the said Cause: Provided, that it shall

Bishop empowered to inhibit Party accused from performing Services of the Church, etc.

[1] The letters of request need not state at whose request they were granted (4 Moore, P. C. 186).

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be lawful for such Party, being the Incumbent of a Benefice, within Fourteen Days after the Service of the said Notice, to nominate to the Bishop any fit Person or Persons to perform all such Services of the Church during the Period in which such Party shall be so inhibited as aforesaid; and if the Bishop shall deem the Person or Persons so nominated fit for the Performance of such Services he shall grant his Licence to him or them accordingly; or in case a fit Person shall not be nominated the Bishop shall make such Provision for the Service of the Church as to him shall seem necessary; and in all such Cases it shall be lawful for the Bishop to assign such Stipend, not exceeding the Stipend required by Law for the Curacy of the Church belonging to the said Party, nor exceeding a Moiety of the net annual Income of the Benefice, as the said Bishop may think fit, and to provide for the Payment of such Stipend, if necessary, by Sequestration of the Living: Provided also, that it shall be lawful for the said Bishop at any Time to revoke such Inhibition and Licence respectively.

What Appeals may be.

15. And be it enacted, That it shall be lawful for any Party who shall think himself aggrieved by the Judgment pronounced in the first Instance by the Bishop, or in the Court of Appeal of the Province, to appeal from such Judgment; and such Appeal shall be to the Archbishop, and shall be heard before the Judge of the Court of Appeal of the Province, when the Cause shall have been heard and determined in the first Instance by the Bishop, and shall be proceeded in in the said Court of Appeal in the same Manner, and subject only to the same Appeal as in this Act is provided with respect to Cases sent by Letters of Request to the said Court; and the Appeal shall be to the Queen in Council, and shall be heard before the Judicial Committee of the Privy Council when the Cause shall have been heard and deter-

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mined in the first Instance in the Court of the Archbishop.

Archbishops and Bishops Members of the Privy Council to be Members of the Judicial Committee on all Appeals under this Act.

16. And be it enacted, That every Archbishop and Bishop of the United Church of *England* and *Ireland*, who now is, or at any Time hereafter shall be, sworn of Her Majesty's most Honourable Privy Council, shall be a Member of the Judicial Committee of the Privy Council for the Purposes of every such Appeal as aforesaid; and that no such Appeal shall be heard before the Judicial Committee of the Privy Council unless at least One of such Archbishops or Bishops shall be present at the Hearing thereof: Provided always, that the Archbishop or Bishop who shall have issued the Commission hereinbefore mentioned in any such Case, or who shall have heard any such Case, or who shall have sent any such Case by Letters of Request to the Court of Appeal of the Province, shall not sit as a Member of the Judicial Committee on an Appeal in that case.

Attendance of Witnesses, and Production of Papers, etc., may be compelled.

17. And be it enacted, That it shall be lawful in any such Inquiry for any Three or more of the Commissioners, or in any such Proceeding for the Bishop, or for any Assessor of the Bishop, or for the Judge of the Court of Appeal of the Province, to require the Attendance of such Witnesses, and the Production of such Deeds, Evidences, or Writings as may be necessary; and such Bishop, Judge, Assessor, and Commissioners respectively shall have the same Powers for these Purposes as now belong to the Consistorial Court and to the Court of Arches respectively.

Witnesses to be examined on Oath, and to be liable to Punishment for Perjury.

18. And be it enacted, That every Witness who shall be examined in pursuance of this Act shall give his or her Evidence upon Oath, or upon solemn Affirmation in Cases where an Affirmation is allowed by Law instead of an Oath, which Oath or Affirmation respectively shall be administered by the Judge of the Court or his Surrogate, or by the Assessor of

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the Bishop, or by a Commissioner; and that every such Witness who shall wilfully swear or affirm falsely shall be deemed guilty of Perjury.

Provisions of Act not to interfere with Persons instituting Suits to establish a Civil Right.

19. Provided always, and be it enacted, That nothing hereinbefore contained shall prevent any Person from instituting as voluntary Promoter, or from prosecuting, in such Form and Manner and in such Court as he might have done before the passing of this Act, any Suit which, though in Form Criminal, shall have the Effect of asserting, ascertaining, or establishing any Civil Right, nor to prevent the Archbishop of the Province from citing any such Clerk before him in Cases and under Circumstances in and under which such Archbishop might, before the passing of this Act, cite such Clerk under and in pursuance of a Statute passed in the Twenty-third Year of the Reign of King *Henry* the Eighth, intituled *An Act that no Person shall be cited out of the Diocese where he or she dwelleth, except in certain Cases.*[1]

23 H. 8. c. 9.

Suits to be commenced within Two Years.

20. And be it enacted, That every Suit or Proceeding against any such Clerk in Holy Orders for any Offence against the Laws Ecclesiastical shall be commenced[2] within Two Years after the Commission of the Offence in respect of which the Suit or Proceeding shall be instituted, and not afterwards: Provided always, that whenever any such Suit or Proceeding shall be brought in respect of an Offence for which a Conviction shall have been obtained in any Court of Common Law, such Suit or Proceeding may be brought against the Person convicted at any Time within Six Calendar Months after such Conviction, although more than Two Years shall have elapsed since the Commission of the Offence in respect of which such Suit or Proceeding shall be so brought.

Proviso.

[1] See § 23.

[2] The commencement of the suit dates from the time when the citation is served (10 Jur. N. S. 647, & 2 Moore, P. C. C. 253).

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27 G. 3, c. 4, not to apply to Suits against Spiritual Persons for certain Offences.

21. And be it declared and enacted, That the Act passed in the Twenty-seventh Year of the Reign of His late Majesty King *George* the Third, intituled *An Act to prevent frivolous and vexatious Suits in the Ecclesiastical Courts*, does not and shall not extend to the Time of the Commencement of Suits or Proceedings against Spiritual Persons for any of the Offences in the said Act named.

Power of Archbishops and Bishops as to exempt or peculiar Places or Preferments.

22. And be it enacted, That every Archbishop and Bishop within the Limit of whose Province or Diocese respectively any Place, District, or Preferment, exempt or peculiar, shall be locally situate, shall, except as herein otherwise provided, have, use, and exercise all the Powers and Authorities necessary for the due Execution by them respectively of the Provisions and Purposes of this Act, and for enforcing the same with regard thereto respectively, as such Archbishop and Bishop respectively would have used and exercised if the same were not exempt or peculiar, but were subject in all respects to the Jurisdiction of such Archbishop or Bishop; and where any Place, District, or Preferment, exempt or peculiar, shall be locally situate within the Limits of more than One Province or Diocese, or where the same, or any of them, shall be locally situate between the Limits of the Two Provinces, or between the Limits of any Two or more Dioceses, the Archbishop or Bishop of the Cathedral Church to whose Province or Diocese the Cathedral, Collegiate, or other Church or Chapel of the Place, District, or Preferment respectively shall be nearest in local Situation, shall have, use, and exercise all the Powers and Authorities which are necessary for the due execution of the Provisions of this Act, and enforcing the same with regard thereto respectively, as such Archbishop or Bishop could have used if the same were not exempt or peculiar, but were subject in all respects to the Jurisdiction of such Archbishop or

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Bishop respectively, and the same, for all the Purposes of this Act, shall be deemed and taken to be within the Limits of the Province or Diocese of such Archbishop or Bishop; Provided that the Peculiars belonging to any Archbishoprick or Bishoprick, though locally situate in another Diocese, shall continue subject to the Archbishop or Bishop to whom they belong, as well for the Purposes of this Act as for all other Purposes of Ecclesiastical Jurisdiction.

No suit to be instituted, except as herein provided.

23. And be it enacted, that no *Criminal* Suit[1] or Proceeding against a Clerk in Holy Orders of the United Church of *England* and *Ireland* for any Offence against the Laws Ecclesiastical shall be instituted in any *Ecclesiastical* Court otherwise than is hereinbefore enacted or provided.[2]

If a Bishop is Patron of the Preferment held by accused Party, Archbishop to act in his Stead.

24. And be it enacted, That when any Act, save sending a Case by Letters of Request to the Court of Appeal of the Province, is to be done, or any Authority is to be exercised by a Bishop under this Act, such Act shall be done or Authority exercised by the Archbishop of the Province in all Cases where the Bishop who would otherwise do the Act or exercise the Authority is the Patron of any Preferment held by the Party accused.

Saving of Archbishop and Bishop's Powers.

25. And be it enacted, That nothing in this Act contained shall be construed to affect any Authority over the Clergy of their respective Provinces or Dioceses which the Archbishops or Bishops of *England* and *Wales* may now according to Law exercise personally and without Process in Court; and that nothing herein contained shall extend to *Ireland*.

Act may be amended this Session.

26. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

[1] A proceeding in the Consistorial Court to recover penalties for non-residence under 1 & 2 Vict. c. 106, §§ 33 & 124, is not a criminal suit (9 Q. B. R. 691; 1 Rob. 367).

[2] See § 19.

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Appendix D.,

containing the "Charitable Trusts Acts of 1853, 1855, and 1860."

16 & 17 Vict. c. 137.[1]

An Act for the better Administration of Charitable Trusts. [20th August, 1853.]

Whereas it is expedient to provide Means for securing the due Administration of Charitable Trusts, and for the more beneficial Application of Charitable Funds in certain Cases: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Her Majesty empowered to appoint Charity Commissioners, Secretary, and Inspectors.

1. It shall be lawful for Her Majesty and Her Successors, by Warrant under the Royal Sign Manual, to appoint Four Commissioners, and also One Secretary and Two[2] Inspectors for the Purposes of this Act; and upon any Vacancy by the Death, Resignation, or Removal of any Commissioner, Secretary, or Inspector, under this Act, from Time to Time in like Manner to appoint another Person to succeed to such

[1] This Act, and the following Acts amending it, are appended *in extenso*, on account of their great importance, since they affect almost every parish and district in the kingdom. See the Chapter on Charities.

[2] See Act of 1855, sect. 3, *infra*.

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Vacancy, and until a fresh Appointment shall be made it shall be lawful for the surviving or continuing Commissioners, in case of any Vacancy, to act as if no such Vacancy had occurred: and Three of the said Commissioners shall hold Office during good Behaviour; and the Fourth, and every Secretary and Inspector to be appointed under this Act, shall hold Office during the Pleasure of Her Majesty.

Qualification of Commissioners.

2. The said Three Commissioners so holding Office during good Behaviour shall be paid as hereinafter mentioned, and Two at least of the said paid Commissioners for the Time being shall be Barristers-at-Law of not less than Twelve Years' standing at the Time of their respective Appointments, and One of such Barristers shall be the Chief Commissioner, and shall be so called and distinguished in his Appointment.

Officers of the Board.

3. The said Commissioners, with the Sanction of the Commissioners of Her Majesty's Treasury, shall from Time to Time appoint such Clerks and Messengers as the said Commissioners may think fit, and all Persons appointed under this Provision shall hold their Offices during the Pleasure of the said Commissioners.

Salaries.

4. There shall be paid to the said paid Commissioners, and to the said Secretary, Inspectors, Clerks, and Messengers, such Salaries not exceeding for the Chief Commissioner the annual Sum of One thousand five hundred Pounds, and for each of the other paid Commissioners the annual Sum of One thousand two hundred Pounds, and for the said Secretary the annual Sum of Six hundred Pounds,[1] and for each of the said Inspectors the annual Sum of Eight hundred Pounds, as shall be from Time to Time allowed by the Commissioners of Her Majesty's Treasury, who may also allow to every Commissioner, Inspector, and other

[1] See Act of 1860, sec. 22, *infra*.

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Person appointed for the Purposes of this Act, such reasonable Travelling and other Expenses as may be incurred by him in the Execution of his Office, and the said Salaries and Expenses, and the incidental Expenses of the said Board, shall be paid out of any Moneys which may be from Time to Time provided by Parliament for that Purpose: Provided always, that after the Thirty-first Day of *March*, in the Year One thousand eight hundred and fifty-seven, the said annual Salary shall be paid to *One only* of the said Commissioners besides the said Chief Commissioner.[1]

No paid Commissioner, Secretary, or Inspector to sit in House of Commons.

5. No paid Commissioner, Secretary, or Inspector to be appointed under this Act shall be capable of sitting in the House of Commons during the tenure of his Office.

Style of Commissioners, who may sit as a Board.

6. The said Commissioners, to be appointed under this Act shall be styled "The Charity Commissioners for *England* and *Wales*," and may have and use a Seal for authenticating Documents; and such Commissioners shall sit from Time to Time as a Board for carrying this Act into execution; and any Two of such Commissioners may form a Board, and may exercise all or any of the Powers conferred on the Commissioners or the Board by this Act.

Board to frame General Minutes.

7. The said Board shall, by General Minutes,[2] from Time to Time prescribe Regulations for their Proceedings, and the Proceedings of their Inspectors, and concerning the Form and Manner of Applications to the said Board, and the Conditions to be performed by Applicants, and for the Guidance of Applicants in relation thereto, and all such General Minutes shall be signed by Three of the said Commissioners at the least; and Copies of all such General Minutes shall be laid before both Houses of Parliament within Fourteen Days after the making thereof, if Parliament be sitting;

[1] Proviso repealed by section 2 of 18 & 19 Vict. c. 124 (1855).
[2] See Act of 1860, sect. 21.

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or if Parliament be not sitting, then within Fourteen Days after the next meeting thereof.

Minutes of Proceedings and Orders, etc., to be entered, and Copies of Entries signed by the Secretary to be received in Evidence.

8. The said Board shall cause Minutes of their Proceedings, and all Orders, Certificates, and Schemes, made or approved by them under this Act, to be entered in Books to be provided and kept for such Purpose, and all such Entries shall be signed by their Secretary, and all Copies purporting to be extracted from the Books of the said Board, and to be certified by their Secretary, of any such Minutes, Orders, Certificates, and Schemes entered as aforesaid, shall be received as Evidence of the Proceedings to which such Minutes shall relate, and of such Orders, Certificates, or Schemes, and of the making or Approval thereof (as the Case may require) by the said Board, without further Proof thereof.[1]

Board to inquire into Condition and Management of Charities.

9. It shall be lawful for the said Board from Time to Time, as they in their Discretion may see fit, to examine and inquire into *all or any*[2] Charities[3] in *England* or *Wales*, and the Nature and Objects, Administration, Management, and Results thereof, and the Value, Condition, Management, and Application of the Estates, Funds, Property, and Income belonging thereto; and the said Board may cause Examinations and Inquiries in relation to the Matters aforesaid to be made and prosecuted by their Inspectors, acting together or separately, in such Cases and at such Times as the said Board may think fit; and all such Inspectors shall from Time to Time report their Proceedings to the said Board.[4]

Power to require Accounts and Statements.

10. The said Board may require all Trustees or Persons acting or having any Concern in the Manage-

[1] See sections 4 & 5 of the Act of 1855.

[2] There is no necessity, as in section 23, for any consents.

[3] As to the import of the word "Charity," see section 66 of this Act; and its enlarged meaning in the 48th section of the Amendment Act of 1855. See also section 6 of the Act of 1855, extending these powers of the Commissioners.

[4] See sections 14 & 15, and section 6 of Act of 1855.

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ment or Administration of any Charity, or the Estates, Funds, or Property thereof, to render to the said Board, or to their Inspectors, or either of them, Accounts and Statements in Writing in Relation to such Charity, or the Funds, Estates, Property, Income, or Moneys thereof, or the Administration, Management, and Application thereof, and may also require such Trustees and Persons to return Answers in Writing to any Questions or Inquiries addressed to them by the Direction of the said Board relating to the Matters aforesaid.[1]

Officers having Custody of Records to furnish Copies and Extracts if required by Board.

11. All Officers having the Custody of Enrolments, Decrees, Reports, Records, and other Documents relating to or concerning any Charity shall furnish such Copies or Extracts as shall be required by the said Board; and every Inspector, Secretary, and other Officer of the said Board for the Time being employed for the Purposes of this Act shall be at liberty by the Authority and under the Directions of the Board, and subject to such Regulations as the Board may make in that Behalf, to examine and search the Registers and Records of every Court of Law and Equity, and every Ecclesiastical Court, and every public Registry and Office of Records, and to take Copies of and Extracts from any Decree or Document recorded or registered or deposited therein respectively, for any Purpose contemplated by this Act, without Fee or other Payment in respect thereof.

Inspector may examine Witnesses on Oath.

12.[2] Any Inspector acting under the Authority of the said Board may, by Precept under his Hand, subject to such Regulations as the said Board may make in that Behalf, require any Person, being a Trustee of any Charity or otherwise acting or having any Concern in the Management or Administration of any Charity, or of the Estates, Funds, or Property thereof, or in the

[1] See sections 6 & 7 of the Act of 1855, explaining this section.
[2] Extended by sections 3 and 7 of the Act of 1855.

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Receipt or Payment of the Income or Moneys thereof, or deriving any Income or Stipend therefrom, to attend before such Inspector for the Purpose of being examined by him touching or relating to such Charity, or the Estates, Funds, Property, or Income thereof, at any Time and Place mentioned or appointed by such Precept, and to bring and Produce any Deed, Paper, Writing, Instrument, or other Document,[1] being in the Custody, Possession, or Power of such Person, and relating to such Charity, or the Estates, Funds, Property, or Income thereof, and may examine upon Oath all Persons attending in pursuance of such Precept, and all Persons voluntarily attending before him, and may administer such Oath: Provided always, that no Person shall be obliged to travel in obedience to any such Precept more than Ten Miles from his Place of Abode.

Persons giving false Evidence guilty of a Misdemeanour.

13. If any Person wilfully give false Evidence upon any Examination under this Act, every Person so offending shall be deemed guilty of a Misdemeanour.

Persons refusing to render Accounts, etc., to be deemed guilty of a Contempt of Court.

14. If any Person from whom the said Board, or any Inspector, is authorized to require any Account or Statement, or Answers to any Questions or Inquiries, or whose Attendance any Inspector is authorized to require, shall refuse or wilfully neglect to render to the said Board such Account or Statement, or to make Answers to such Questions or Inquiries, or to attend in obedience to any lawful Precept of any Inspector, or to give Evidence before him, or shall wilfully alter, destroy, withhold, or refuse to produce any Deed, Paper, Writing, Instrument, or other Document which may be lawfully required to be produced before any Inspector or the said Board, every Person so offending shall be deemed and taken to have been guilty of a Contempt of the High Court of Chancery, and shall be liable to be attached and committed by

[1] See section 19 of Act of 1860.

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such Court on summary Application *by the Commissioners* to the same, and shall pay the Costs of and attending such Contempt as the said Court shall direct.[1]

Saving for Persons claiming adversely to Charities.

15. Provided always, that nothing herein contained shall extend to give to the said Board or their Inspectors any Power of requiring from any Person holding or claiming to hold any Property whatsoever *adversely to any Charity*, or free or discharged from any Charitable Trust or Charge, any Information, or the Production of any Deed or Document whatever in relation to the Property so held or claimed adversely, or any Charitable Trust or Charge alleged to affect the same.[2]

Board to entertain Applications for their Opinion or Advice.

16. The said Board shall receive and consider all Applications which may be made to them,[3] *by any Trustee or other Person having any Concern* in the Management or Administration of any Charity, for their Opinion, Advice, or Direction respecting such Charity, or the Management or Administration thereof, or the Estates, Funds, Property, or Income thereof, or the Application thereof, or any Question or Dispute relating to the same respectively; and, if they so think fit, may, upon any such Application, give such Opinion or Advice as they think expedient, subject to any Judicial Order or Direction which may be subsequently made or given by any competent Court or Judge; and such Opinion or Advice shall be in Writing,[4] signed by Two or more of the said Commissioners, and sealed with the Seal of the said Commis-

[1] See section 9 of Act of 1855.

[2] And see section 41, *infra*, and section 6 of the Act of 1855. This would apply to a case where parties claimed to hold free from any Trust (see 3 Mylne and Craig, Ch. 239), as for instance if the Trust had expired; and see 19 Law Journal, Ch. 763.

[3] But by these only; but see section 17 as to the obtaining leave to sue "by any person whomsoever."

[4] See section 4 of Act of 1855.

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Persons acting on Advice of Board to be indemnified.

sion: and every Trustee and other Person who shall act upon or in accordance with the Opinion or Advice given by the said Board shall in respect of so acting be deemed and taken, so far as respects his own Responsibility, to have acted in accordance with his Trust; and no such Judicial Order or Direction subsequently made or given by any Court or Judge shall have any such retrospective Effect as to interfere with or impair the Indemnity by this Act given to Trustees and other Persons who have acted upon or in accordance with such Opinion or Advice of the said Board: Provided always, that nothing herein contained shall extend to indemnify any Trustee or other Person for any Act done in accordance with the Opinion or Advice of the said Board, if such Trustee or other Person have been guilty of any Fraud or wilful Concealment or Misrepresentation in obtaining such Opinion or Advice.

Notice of legal Proceedings as to any Charity by any Person, except the Attorney-General, to be given to the Board.

17. Before any Suit, Petition, or other Proceeding (not[1] being an Application in any Suit or Matter actually pending) for obtaining any Relief, Order, or Direction concerning or relating to any Charity, or the Estate, Funds, Property, or Income thereof, shall be commenced, presented, or taken, *by any Person whomsoever*,[2] there shall be transmitted by such Person to the said Board, Notice in Writing of such proposed Suit, Petition, or Proceeding, and such Statement, Information, and Particulars as may be requisite or proper, or may be required from Time to Time, by the said Board, for explaining the Nature and Objects thereof;[3] and the said Board, if upon

[1] When a final order has been made, the Suit or Matter is not "actually pending" (Re Jarvis's Charity, 1 Drewry and Sm. 97).

[2] *Quære*, does this apply to a person claiming *adversely* to a Charity? (See sec. 15.)

[3] *The course, therefore, will be in any such case to apply to the Board for permission to take the proceeding which may be desired, and then, upon obtaining the certificate, to proceed under sections* 28 *or* 32,

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Consideration of the Circumstances they so think fit, may, by an Order or Certificate signed by their Secretary, authorize or direct any Suit, Petition, or other Proceeding to be commenced, presented, or taken with respect to such Charity, either for the Objects and in the Manner specified or mentioned in such Notice, or for such other Objects, and in such Manner and form, and subject to such Stipulations or Provisions for securing the Charity against Liability to any Costs or Expenses, and to such other Stipulations or Provisions for the Protection or Benefit of the Charity, as the said Board may think proper; and such Board, if it seem proper to them, may by such Order or Certificate as aforesaid require and direct that any Proceeding so authorized by them in respect of any Charity, shall be delayed during such Period as shall seem proper to and shall be directed by such Board; and every such Order or Certificate may be in such Form and may contain such Statements and Particulars as such Board shall think fit; and (save as herein otherwise provided) no Suit, Petition, or other Proceeding for obtaining any such Relief, Order, or Direction as last aforesaid shall be entertained or proceeded with by the Court of Chancery, or by any Court or Judge, except upon and in conformity with an Order or Certificate of the said Board: Provided always, that this Enactment shall not extend to or affect any such Petition or Proceeding in which any person shall claim any Property or seek any Relief adversely to any Charity.

Courts not to entertain Proceedings as to Charities, except upon Certificate of the Board.

18. Provided always, that it shall be lawful for Her Majesty's Attorney-General acting *ex officio* to make such Applications, and take and prosecute such Proceedings with respect to any Charity in the Court of Chancery, or otherwise, as to him may seem fit, as if

Saving for the Attorney-General acting ex officio.

according as the income of the Charity may or may not exceed 30l. a-year.

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this Act had not been passed; and that nothing in this Act contained shall be construed as dispensing with the Fiat or Allowance of Her Majesty's Attorney-General, with respect to any Proceeding not being an Application under the Jurisdiction created by this Act, where such Fiat or Allowance was necessary before the passing of this Act.

Board may, upon the Report of an Inspector, authorize Proceedings where no Notice has been given to them, and may in other Cases cause local Inquiries by their Inspector.

19. Provided also, that where upon any Report of any Inspector under this Act or otherwise it appears to the said Board that any Suit, Petition, or other Proceeding concerning or relating to any Charity, or the Estate, Funds, Property, or Income thereof, would be proper or expedient, it shall be lawful for the said Board by their Order to authorize or direct such Suit, Petition, or Proceeding to be commenced, presented, or taken, and to give such Directions in relation thereto as the said Board may think proper; and thereupon such Suit, Petition, or Proceeding may be commenced, presented, or taken accordingly, without any such previous Notice in Writing as hereinbefore mentioned; and the said Board, before giving any such Opinion, Advice, or Direction upon any such Application as aforesaid, or making any such Order or Certificate after Notice to them as aforesaid, may, where local Inquiry appears to them to be requisite, cause such Inquiry to be made by One of their Inspectors; and the said Board may, in any Case where they see fit, before acting upon the Report of any Inspector, cause such Report to be deposited for local Inspection, and give Notice of the same being so deposited, and consider any Statement or Objections which may be transmitted to them in relation thereto.

Power for Board to certify certain Cases to the Attorney-General.

20. In any Case in which it shall appear to the said Board that the Institution of legal Proceedings is requisite or desirable with respect to any Charity, or the Estates, Funds, Property, or Affairs thereof, and that under the Circumstances thereof it is desirable that

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such Proceedings should be instituted by the Attorney-General, it shall be lawful for the said Board, if they so think fit, to certify such Case, in Writing under the Hand of the Secretary of the said Board, to Her Majesty's Attorney-General, together with such Statements and Particulars (if any) as in the Opinion of the said Board may be requisite or proper for the Explanation of such Case; and thereupon the said Attorney-General, if upon Consideration of the Circumstances he think fit, shall institute and prosecute such legal Proceedings as he shall consider requisite or proper under the Circumstances of such Case, by Information or Petition in the Court of Chancery, or by Application to a Judge thereof at Chambers, or to a District Court of Bankruptcy, or County Court under the Jurisdiction given by this Act.

Board may sanction Building Leases, working Mines, doing Repairs and Improvements

21. If in any Case it appear to the Trustees[1] or Persons for the Time being acting in the Administration or Management of any Charity, or the Estates or Property thereof, that any Part of the Charity Lands or Estates may be beneficially let on Building, Repairing, Improving, or other Leases, or on Leases for working any Mine, or that the digging for or raising of Stone, Clay, Gravel, or other Minerals, or the cutting of Timber, would be for the Benefit of the Charity, or that it would be for the Benefit of such Charity that any new Road or Street should be formed or laid out, or any Drains or Sewers made through any Part of the Charity Estates, or that any new Building should be erected, or that any existing Building should be repaired, altered, rebuilt, or wholly removed, or that any other Improvements[2] or Alterations in the State or

[1] It should be borne in mind, in reading this and the following Act, that by section 16 of the Act of 1860, a majority of two-thirds at Meetings of the Trustees are competent to act for the whole number.

[2] Extended. See section 15 of the Act of 1860.

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Condition of the Lands or Estates of such Charity should be made, it shall be lawful for such Trustees or Persons to lay before the said Board a Statement and Proposal in relation to any of the Matters aforesaid; and it shall be lawful for the said Board, if they think that the Leases or Acts to which the Statement and Proposal relate (with or without Modifications or Alterations) would be beneficial to the Charity, to make such Order under their Seal for and in relation to the granting of such Leases,[1] or the doing of any other such Acts as aforesaid, and any Circumstances connected therewith, as they may think fit, although such Leases or Acts respectively shall not be authorized or permitted by the Trust;[2] and the said Board, by any such Order, may authorize the Application of any Moneys or Funds belonging to the Charity for any of the Purposes or Acts aforesaid, and, if necessary, may authorize the Trustees to raise any Sum of Money by Mortgage of all or any Part of the Charity Estates;[3] *provided that compulsory Provisions be reserved in every such Mortgage for the Payment of the Principal Money borrowed by annual Instalments, and for the Redemption and Re-conveyance of the Mortgaged Estates, within the Period of not more than Thirty Years.*[4]

and may authorize the Application of the Charity Funds or the raising of Money on Mortgage for those Purposes.

22. It shall be lawful for the Board, upon Proof to their Satisfaction that any Schoolmaster or Schoolmistress or other Officer of any Charity has been negligent in performing his or her Duties, or that he or she is unfit or incompetent to discharge them properly either from immoral Conduct, Age, or any other Cause whatsoever, to empower the Trustees of such Charity to remove such Schoolmaster or Mistress or other Officer, and to charge the Salary of his or her Successors, or

Commissioners to authorize Trustees to remove Officers.

[1] See section 29 of the Act of 1855.
[2] See section 38 of the Act of 1855.
[3] See section 15 of the Act of 1855.
[4] *Repealed.* See section 30 of the Act of 1855.

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any other Portion of the Revenues of the Charity, with such Retiring Pension or Allowance, if any, in favour of the Person so removed, and generally to impose such Conditions as to the said Board shall appear proper.[1] Provided always, that where there shall be any special Visitor of the Charity, the Consent of such Visitor, in Writing under his Hand, shall be necessary in order to such Removal.[2]

Board may sanction Compromise of Claims on behalf of Charity.

23. If in any Case it appear to the Trustees or Persons acting in the Administration of any Charity that any Claim or Demand or Cause of Suit *against* any Person in relation to such Charity may, with advantage to the Charity, or should, under the special Circumstances of the Case, be compromised or adjusted without taking or without continuing any Proceedings at Law or in Equity, such Trustees or Persons may, or the Person against whom such Claim, Demand, or Cause of Suit exists or is alleged to exist may, *with the Consent of the Trustees or Persons acting in the Administration of such Charity*, submit to the said Board a Statement and Proposal for such Compromise or Adjustment; and if it appear to the said Board after such Inquiry in relation thereto by One of their Inspectors as they may deem requisite, or otherwise, that such Proposal either with or without any Modification is fit and proper, and for the Benefit of the Charity, it shall be lawful for the said Board to make such Order for and in relation to such Compromise or Adjustment as they may think fit; and upon the due Performance of the Terms and Conditions of such Compromise or Adjustment as aforesaid, such Agreement shall be a final Bar to all Actions, Suits, Claims,

[1] This clause is important. Masters, &c., generally are deemed to hold office *for life, dum bene se gesserint*; and their dismissal for incapacity, age, &c., was often extremely difficult; and see sections 13 and 14 of Act of 1860.

[2] See sections 2 and 14 of Act of 1860.

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and Demands by or on behalf of the Charity concerned therein, in respect to the Cause of Action, Suit, or Matter in respect to which such Compromise or Adjustment shall have been made.[1]

Board, under special Circumstances, may authorize Sale or Exchange of Charity Lands.

24. Upon Application to the said Board by the Trustees or Persons acting in the Administration of any Charity, representing to the said Board that, under the Special Circumstances of any Land belonging to the Charity, a Sale or Exchange of such Land can be effected on such Terms as to increase the Income of the Charity, or would otherwise be advantageous to the Charity, such Board may, if they think fit, inquire into such Circumstances, and if, after Inquiry, they are satisfied that the proposed Sale or Exchange will be advantageous to the Charity, may authorize the Sale or Exchange, and give such Directions in relation thereto, and for securing the due Investment of the Money arising from any such Sale, or by way of Equality of Exchange for the Benefit of the Charity, as they may think fit.[2]

Board may authorize the Redemption of Rentcharges.

25. The said Board shall have Authority, upon such Application as aforesaid, to authorize the Sale to the Owners of the Land charged therewith of any Rentcharge, Annuity, or other periodical Payment charged upon Land and payable to or for the Benefit of any Charity, or applicable to Charitable Purposes, upon such Terms and Conditions as they may deem beneficial to the Charity, and to give such Directions for securing the due Investment of the Money arising from such Sale for the Benefit of the Charity, or for securing the due Application thereof to such Charitable Purposes, as they may think fit; and in like Manner the Trustees of any Charity, with the Consent of the Board, may

[1] Extended by section 31 of the Act of 1855, to actions, &c., *against* any charity.

[2] See sections 29, 32, 35, 36, and 38 of the Act of 1855, and Sons of Clergy *v.* Sutton, 29 Law Journal, Ch. 393.

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purchase any Rentcharge or other yearly Payment to which the Charity Estate is or shall be liable.

Leases, Sales, &c., authorized to be valid.

26. The Leases, Sales, Exchanges, and other Transactions authorized by such Board under the Powers of this Act shall have the like Effect and Validity as if they had been authorized or directed by the express Terms of the Trust affecting the Charity.[1]

Trustees of Charities enabled to purchase Sites for Building from Owners under Disability, &c., according to the Provisions of Lands Clauses Consolidations Act, 1845.

27. Where any Land shall be required for the Erection or Construction of any House or Building with or without Garden, Playground, or other Appurtenances, for the Purposes of any Charity, *and the Trustees of the Charity shall be legally authorized to purchase and hold such Land*,[2] but by reason of the Disability of any Person having an Estate or Interest in such Land, or of any Defect in Title thereto, a valid and perfect Assurance of the same Land cannot be made to the Trustees of the Charity in the ordinary Manner, it shall be lawful for the Trustees of the Charity, with the sanction of the said Board (such Sanction to be certified under the Hand of their Secretary), to take and purchase such Land according to the Provisions of "The Lands Clauses Consolidation Act, 1845;" and for that Purpose all the Clauses and Provisions of the last-mentioned Act with respect to the Purchase of Lands by Agreement, and with respect to the Purchase Money or Compensation coming to Parties having limited Interests, or prevented from treating, or not making a Title, and also with respect to Conveyances of Lands, so far as the same Clauses and Provisions respectively are applicable to the Cases contemplated by this Provision, shall be incorporated in this Act; and in all Cases contemplated by this Provision, the Expression "the Special Act" used in the said Clauses and Provisions of the said "Lands Clauses Consolidation Act" shall be con-

[1] See section 38 of Act of 1855.

[2] By section 41 of the Act of 1855, this section is to be construed and operate as if the words in italics had been omitted therefrom.

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strued to mean this Act; and the Expression "the Promoters of the Undertaking," used in the same Clauses and Provisions, shall be construed to mean the Trustees of the Charity in question.

In Cases of Charities the Incomes of which exceed 30*l.*, Masters of the Rolls and Vice-Chancellors, upon Application to them at Chambers, to have the same Jurisdiction as the Court of Chancery or Lord Chancellor now has upon Information,

28.[1] Where the *Appointment or Removal of any Trustees, or any other Relief, Order, or Direction relating to any Charity* of which the gross annual Income for the Time being exceeds Thirty Pounds,[2] shall be considered desirable, and such Appointment, Removal, or other Relief, Order, or Direction might now be made or given by the Court of Chancery, in respect either of its ordinary or its special or statutory Jurisdiction, or by the Lord Chancellor intrusted with the Care and Commitment of the Custody of Lunatics, it shall be lawful for any Person authorized in this Behalf by the Order or Certificate[3] of the said Board, or for the Attorney-General, to make Application (without any Information, Bill, or Petition) to the Master of the Rolls or one of the Vice-Chancellors *sitting at Chambers*, for such Order, Direction, or Relief as the Nature of the Case may require;[4] and the Master of the Rolls or the Vice-Chancellor to whom any such Application shall be made shall and may proceed upon and dispose of such Application in Chambers, save where he may think fit otherwise to direct, and shall and may have and exercise thereupon all such Jurisdiction, Power, and Authority, and make such Orders and give such Directions in relation to the Matter of such Application, as might now be exercised, made, or given by the Court of Chancery or by the Lord Chancellor intrusted as aforesaid, in a Suit regularly instituted, or upon Petition, as the Case may

[1] See Act of 1860, § 2, and §§ 4, 5, & 6, and see § 45 of this Act, and as to *form* of application see p. 398.

[2] As to London, see §§ 30 & 32; and where the income does *not* exceed 50*l.* see § 32, and see § 4 of Act of 1860.

[3] See §§ 17 & 20.

[4] N.B. *This is a very inexpensive and prompt mode of proceeding.*

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require; and the Master of the Rolls and Vice-Chancellors respectively shall, in relation to such Applications as aforesaid, and the Proceedings thereon (subject to any Rules which may be made by the Lord Chancellor, with the Advice and Consent of them or any Two of them), have all such Powers of directing Matters to be heard in open Court, and of ordering what Matters shall be heard and investigated by themselves and their Chief Clerks respectively, and such other Powers and Authorities as by the Act of the last Session of Parliament, Chapter Eighty, are vested in or authorized to be exercised by them at Chambers; and the Provisions of the said Act applicable to Orders made by the Master of the Rolls or any of the Vice-Chancellors at Chambers shall extend to all Orders so made under this Act: Provided always, that, save as may be otherwise provided by any Rules to be made by the Lord Chancellor, with such Advice and Consent as aforesaid, the Determinations of the Master of the Rolls and Vice-Chancellors respectively upon and in relation to such Applications as aforesaid shall not be subject to Appeal in any Case where the gross annual Income of the Charity does not exceed One hundred Pounds: Provided also, that it shall be lawful for the Master of the Rolls or any Vice-Chancellor, where under the Circumstances of any Application as aforesaid he may so see fit, to direct that for obtaining the Relief, Order, or Direction sought for by such Application an Information, Bill, or Petition, as the Case may require, shall be filed or presented, and prosecute, as now by Law required, and to abstain from further proceeding on such Application.

15 & 16 Vict. c. 80.

Provisions as to Charities within the Jurisdiction of the Court of Chancery of the

29. The Jurisdiction created and given by this Act to the Master of the Rolls and the Vice-Chancellor, sitting in Chambers, upon any Application to them respectively as aforesaid, shall extend concurrently to and may be exercised by the Chancellor of the Duchy

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County Palatine of Lancaster.

and County Palatine of *Lancaster* and the Vice-Chancellor of the same County Palatine respectively for the Time being, as to every Charity within the Jurisdiction of the Court of Chancery of the said County Palatine whose gross annual Income for the Time being exceeds Thirty Pounds, upon Application being made to such Chancellor or Vice-Chancellor respectively; and it shall be lawful for the Chancellor of the said Duchy and County Palatine, with the Concurrence of the Vice-Chancellor of the same County Palatine, from Time to Time to make and issue any Rules and Orders for regulating the Modes of proceeding, and the Fees to be taken in respect of Proceedings under this Act.

Provisions as to Charities exceeding 30*l.* per Annum to extend to Charities in London not exceeding 30*l.*

30. Provided always, that the Provisions of this Act applicable to any Charity the gross annual Income whereof exceeds Thirty Pounds shall extend to any Charity established or administered or applicable to or for Objects or Purposes within the City of *London*, the gross annual Income whereof does *not* exceed Thirty Pounds, in like manner as if such Income exceeded that Amount.

Lord Chancellor, with the Advice of Master of the Rolls and Vice-Chancellors, or Two of them, to make General Orders.

31. It shall be lawful for the Lord Chancellor, with the Advice and Consent of the Master of the Rolls and Vice-Chancellors, or any Two of them, to make and issue General Rules and Orders for regulating the Mode and Form of Applications at the Chambers of the Master of the Rolls and Vice-Chancellors respectively under this Act, and the Proceedings thereon, and for determining in what Cases and under what Conditions and Restrictions the Determinations of the Master of the Rolls and Vice-Chancellors respectively upon or in relation to such Applications shall be subject to Appeal, and the Fees and Allowances to Solicitors of the Court of Chancery, and the Fees to be payable in Money or by Stamps to the Officers of the said Court in respect of such Applications and

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Proceedings thereon; and such Rules and Orders may from Time to Time be varied by the like Authority, and all such Rules and Orders shall be deemed General Orders of the said Court.

District Courts of Bankruptcy and County Courts to have Jurisdiction in Cases of Charities the Incomes of which do not exceed 30*l.*

32. Where any Charity[1] of which the gross annual Income for the Time being does not exceed Thirty Pounds, shall be established or administered or be applicable wholly or partially to or for Objects or Purposes within the District or any Two or more of the Districts of any District Court of Bankruptcy or of any County Court or Courts holden under the Act of the Session holden in the Ninth and Tenth Years of the Reign of Her Majesty, Chapter Ninety-five, *and the Appointment or Removal of any Trustee, or any other Relief, Order, or Direction whatsoever concerning such Charity shall be considered desirable*, and such Appointment or Removal, or other Relief, Order, or Direction, might now be made or given by the Court of Chancery in respect either of its ordinary or its special or statutory Jurisdiction, or by the Lord Chancellor intrusted with the Care and Commitment of the Custody of Lunatics, it shall be lawful for any Person authorized in this Behalf by the Order or Certificate of the said Board, or for the Attorney-General, to make Application to such District or County Court, or, as the Case may be, to any one of such District or County Courts,[2] for such Order, Direction, or Relief as the Nature of the Case may require; and such District or County Court shall entertain such Application, and shall hear the Matter in open Court, and shall give such Relief, and make such Orders and Directions in relation to the Matter of such Application, as might now be made or given

[1] As to such Charities in London, see § 30; and where the income *exceeds* 30*l.* see § 28; and see Act of 1860, §§ 2 and 11,

[2] Where the Charity is distributable over two or more districts, see § 34.

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by the Court of Chancery or by the Lord Chancellor, intrusted as aforesaid, in a Suit regularly instituted, or upon Petition, as the Case may require; and the Clerk of such County Court shall transmit a Copy of such Order or Direction to the Office in *London* of the Registrar of County Courts' Judgments, to be there enrolled: Provided always, that no Judge of any District or County Court shall be authorized to vary any Decree, Order, or Direction of the Court of Chancery, or of any Judge thereof, or to make or give any Order or Direction inconsistent or conflicting with any such Decree, Order, or Direction: Provided also, that where Two or more District or County Courts shall have concurrent Jurisdiction with respect to any Charity under this Act, no Application in respect of such Charity shall be made to or entertained by more than One of such District or County Courts at the same Time.[1]

Deputy sitting for County Court Judge not to exercise Jurisdiction.

33. The Jurisdiction hereby created and conferred on the County Courts with respect to any Charity shall not be exercised by any Deputy or other Person who may for the Time being be appointed to sit and shall be sitting for any such Judge.

Where Two or more Courts have concurrent Jurisdiction, Board to direct to which Court Application shall be made.

34. Where Two or more District Courts of Bankruptcy or County Courts shall concurrently have Jurisdiction under this Act with respect to any Charity, it shall be lawful for the said Board to order to which of such Courts any Application with respect to such Charity shall be made; and every such Order shall be conclusive as to the Jurisdiction with respect to the Application referred to in such Order.

Board may direct Cases within the Jurisdiction of a District or County

35. It shall be lawful for the said Board to direct that any Application as to any Charity within the Jurisdiction of any District Court of Bankruptcy or County Court shall be made before a Judge of the

[1] The order in certain cases requires the confirmation of the Commissioners. (See § 39.)

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Court to be taken before a Judge of the Court of Chancery in the first instance.

Court of Chancery, or as to any Charity within the Jurisdiction of the Court of Chancery of the County Palatine of *Lancaster*, either before the Chancellor or the Vice-Chancellor of the same County Palatine, or before a Judge of the High Court of Chancery, according to the Provisions herein contained applicable to a Charity the gross annual Income whereof exceeds Thirty Pounds, and in such Case such Application shall be made and may be heard and determined accordingly in like Manner as if the gross annual Income of such Charity exceeded Thirty Pounds; and upon the Production of the Order or Certificate containing such Direction, or of a Copy thereof, the Application with respect to which such Order or Certificate shall have been made shall not be entertained or proceeded with by such District or County Court.

No Order of District or County Court for the appointment or removal of Trustees or approval of a Scheme to be valid unless confirmed by Board.

36. Whenever any Order or Decision is made by any District Court of Bankruptcy or County Court for the Appointment or Removal of any Trustee of any Charity, or approving of any Scheme for regulating or directing the Administration of any Charity, or the Estate, Funds, Property, or Income thereof, a Copy of every such Order or Decision shall immediately upon the making thereof be delivered or transmitted by the Deputy Registrar to such District Court or by the Clerk of the County Court, as the Case may be, together with all requisite Particulars, to the said Board, for the Purpose of being considered by them; and no such Order or Decision shall be valid or effectual until the same shall have been approved by the said Board, such Approval to be testified by a Certificate in Writing, signed by the Secretary of the said Board, and no such Approval shall issue from the said Board until One Calendar Month shall have elapsed after the Receipt by the Board of such Copy and Particulars.

37. In case any such Order or Decision as last

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Board, if dissatisfied with the Order of District or County Court, may remit the Case for Reconsideration, or may transfer the Matter to a Judge of the Court of Chancery.

aforesaid of any District Court of Bankruptcy or County Court shall not be approved by the said Board, it shall be lawful for such Board to remit the same for Reconsideration and Decision by such District or County Court, with such Remarks and Recommendations thereon (if any) as shall seem fit and expedient to such Board, or in the Discretion of the Board, to order and direct that the Subject Matter to which such Order or Decision relates, together with such Order or Decision, shall be submitted to the Consideration and Decision of a Judge of the Court of Chancery, and in such last-mentioned Case no further Proceedings shall be had or taken in the District or County Court with respect to the Matter in question; and in Case the Order or Decision of the District or County Court, on the Reconsideration of any order or decision remitted for Reconsideration, be disapproved as aforesaid by the said Board, such Board shall refer such Orders and Decisions, and the Subject Matter thereof, to a Judge of the Court of Chancery, or, as to any Charity within the Jurisdiction of the Court of Chancery of the County Palatine of *Lancaster*, either to the Chancellor or the Vice-Chancellor of the same County Palatine, or to a Judge of the High Court of Chancery; and where any Order or Decision is referred to a Judge of the Court of Chancery, or of the Court of Chancery of the said County Palatine of *Lancaster*, under this Provision, such Judge shall have and exercise all such Jurisdiction, Power, and Authority in relation thereto as in the Case of a Charity the gross annual Income whereof exceeds Thirty Pounds, and may make such Order in relation to the Matter of such Order or Decision as to him may seem proper.

How Orders of District or County Court under this Act to be enforced.

38. Subject to any Orders to be made by the Lord Chancellor as hereinafter mentioned, and to the other Provisions of this Act, all Proceedings to be taken in any District Court of Bankruptcy or County Court, and all

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Orders and Directions to be made or given by any such District Court or County Court by virtue of the Jurisdiction hereby created and conferred on such Court, shall respectively be subject to the same Rules and Regulations, and have the same Effect, and be registered, enforced, and executed in the same Manner as the other Proceedings, Orders, Judgments, and Directions of the same Court under its ordinary Jurisdiction; and it shall be lawful for any such District Court, or for any County Court, with the Consent of the Board, to rescind or vary any Order which shall have been previously made by such Court, without Prejudice to any Act or Matter in the meantime done under such Order; and for executing and putting in force any Order to be made by any County Court under this Act, every Judge of any such Court shall and may have and exercise all such Powers as by the Act of the Session holden in the Ninth and Tenth Years of Her Majesty, Chapter Ninety-five, are given for enforcing the Payment of any Debt, Damages, or Costs under the said Act.

Appeal.

39. Where any Person authorized to make any Application under this Act (other than Her Majesty's Attorney-General acting *ex officio*), or any other Person who may have been made a Party to any Proceeding upon any Application under this Act, is aggrieved by or dissatisfied with any Order made by any District Court of Bankruptcy or County Court upon any such Application, or any Proceeding thereon, he may, within One Calendar Month after the making of such Order, give Notice in Writing to the said Court, and also to the said Board, that he is desirous to appeal against the same; and if the said Board think it reasonable and proper that such Appeal should be entertained, and give a Certificate to that Effect, such District or County Court shall suspend any Proceedings upon the Order appealed against during such Time as the Circumstances may require: and the said

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Board, if they so think fit, may require the Person giving any such Notice of Appeal to become bound with Two sufficient Sureties, to be approved by the Deputy Registrar of such District Court, or by the Clerk of the County Court, as the Case may be, to the Treasurers of the said Courts respectively, or such other Person as the said Board may see fit, in such Sum as to the said Board shall seem reasonable, to pay such Costs of the Proceedings on the Appeal as shall be ordered to be paid by such Appellant, and also (if the said Board so think fit) to indemnify the Charity against the Costs and Expenses of or attending such Appeal; and every Bond executed under this Provision shall be exempt from Stamp Duty: Provided always, that it shall be lawful for Her Majesty's Attorney-General (acting *ex officio*), at any Time within Three Calendar Months after the making of any Order by a District Court or County Court under this Act, to lodge and commence and prosecute an Appeal against such Order, without giving any such Notice or becoming bound as aforesaid; and every such last-mentioned Appeal shall thereupon be allowed by the Order of such District or County Court, and shall have such other Effect as any other Appeal under this Act.

Proceedings on Appeal.

40. Where any Order allowing an Appeal has been made as aforesaid, the Person thereby allowed to appeal shall within Three Calendar Months present a Petition to the Court of Chancery, setting forth the Order appealed against and the Order allowing such Appeal, and praying such Relief as the Case may require; and upon the hearing of such Petition the Court may confirm, vary, or reverse the Order appealed against, or may remit such Order to the District Court of Bankruptcy or County Court by which the same was made, with or without any Declaration or Directions of the Court of Chancery in

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relation thereto, or may proceed in relation to the Charity to which such Order relates as in the Case of an Application under this Act to a Judge of the Court of Chancery at Chambers, and any Judge of such Court sitting at Chambers or in open Court may make or give any such Orders or Directions in relation to the Matter of such Order as he may see fit, or the Court may make such other Order in relation to the Matter of any such Appeal as to the Court may seem just, and as might be made in the Case of a Suit regularly instituted, or a Petition, as the Case may require; and in case the Party allowed to Appeal do not within such Three Calendar Months present such Petition of Appeal, the Order against which such Appeal was allowed shall be final; and in case any Costs adjudged on any such Appeal to be paid by the Party allowed to appeal be not paid, such Bond as aforesaid may be put in Suit, and the Money to be recovered on every such Bond shall be applied to indemnify the Charity Estate or the Person damnified, or otherwise in such Manner as the Justice of the Case may require, and the Court or Judge by whom such Appeal may have been heard shall think fit.

Bond to prosecute Appeal may be put in Suit.

41. Provided always, that no Judge of the Court of Chancery, nor any District Court of Bankruptcy or County Court, shall upon any Proceedings under this Act have Jurisdiction to try or determine the Title at Law or in Equity to any Real or Personal Property, or any Term or Interest therein, as between any Charity or the Trustee thereof, and any Person holding or claiming such Real or Personal Property, Term, or Interest *adversely* to such Charity, or to try or determine any Question as to the Existence or Extent of any Charge or Trust.[1]

No Chancery Judge, or District or County Court, in Proceedings under this Act, to try Titles &c.

42. Before any Application shall be made to any Judge of the Court of Chancery, or to any District

[1] See section 15, *ante*, and section 6 of the Act of 1855.

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Notice to be published of Application for Schemes or Appointment or Removal of Trustees under this Act.

Court of Bankruptcy or County Court, under any of the Provisions herein contained for the Establishment or Alteration of a Scheme or the Appointment or Removal of any Trustees or Trustee, Notice in Writing of such intended Application shall be given in such Form and Manner as the said Board shall have directed; and if the Order be that such Notice be affixed to or near the Door of any Parish or District Church, the Incumbent and Churchwardens of such Parish or District are hereby respectively required to allow such Notice to be affixed and to remain so affixed during such Period, not less than Fifteen Days, as the said Board shall have ordered: and in any Case in which the Order shall be that such Notice shall be affixed to any Place, Evidence that the same has been so affixed shall be deemed and taken as *prima facie* Evidence that it has remained affixed during the Period prescribed by the Board.

By whom Applications may be made.

48. Every Application to any Judge or Court under the Jurisdiction created or conferred by any of the Provisions of this Act, may be made by Her Majesty's Attorney-General, or, subject to the Provisions aforesaid, by all or any One or more of the Trustees or Persons administering or claiming to administer, or interested in the Charity which shall be the Subject of such Application, or any Two or more Inhabitants of any Parish or Place within which the Charity is administered or applicable; and it shall be lawful for Her Majesty's Attorney-General for the Time being, acting *ex officio*, to make Application by Petition to the Court of Chancery with respect to any Charity under the Provisions of the Act passed in the Fifty-second Year of King *George* the Third, Chapter One hundred and one, or under the Provisions of any Act or Acts passed or to be passed authorizing the Application to the same Court by Petition according to the Provisions of the said Act.

Attorney-General may petition under 52 Geo. 3, c. 101.

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Statement in Certificate of Board of the Amount of Income of any Charity to be sufficient Evidence for determining the Jurisdiction or Proceedings under this Act.

44. For the Purposes of determining the Jurisdiction under this Act with respect to any Charity, or the Right to appeal from the Determination of a Judge of the Court of Chancery, it shall be lawful for the said Board to declare, according to such Judgment as they may be able to form upon the Returns or Statements before them in relation to any Charity, whether the gross annual Income for the Time being of such Charity does or does not exceed Thirty Pounds or One hundred Pounds (as the Case may require), and a Statement in any Certificate or Order of the said Board that according to such Judgment as aforesaid the gross yearly Income of any Charity does or does not exceed Thirty Pounds or One hundred Pounds shall be sufficient Evidence of the Amount of the gross annual Income of such Charity, for the Purpose of determining such Jurisdiction or Right to appeal as aforesaid; and any Certificate or Order made by the said Board under this Act, authorizing any Proceeding or Application concerning any Charity to be taken or made to any District Court of Bankruptcy or County Court, or to the Court of Chancery or any Judge thereof, shall state that the gross annual Income for the Time being of such Charity does not exceed Thirty Pounds, or does exceed Thirty Pounds (as the Case may be): Provided always, that where any Charity, or the Trustees thereof, in addition to the principal Endowment for its general Objects and Purposes, shall be possessed of or entitled to any other Endowment for any particular or special Object or Purpose arising out of or in its Nature or Application connected with the general Objects or Purposes of such Charity, it shall be lawful for the said Board, having regard to the Circumstances of each such Case, and to the Object and Extent of the proposed Application and Litigation, to determine whether such Endowment for such particular or special Object or Purpose should, for the Purposes of Juris-

Proviso as to particular Endowments.

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diction and Proceedings under this Act, be considered and treated as forming Part of the general Endowment of the Charity, or as a separate or independent Charity, and such Board shall frame their Certificate or Order accordingly.

Lord Chancellor to make Orders for regulating Proceedings before District and County Courts. Judges to regulate Proceedings.

45. The Lord Chancellor shall make such Orders for regulating Proceedings by and before the Judges of District Courts of Bankruptcy and County Courts under this Act, and for fixing and determining the Fees to be taken in respect of such Proceedings, as he may see fit; and, subject to such Orders, such Judges may regulate the Proceedings before them respectively so as to render them as summary and inexpensive as conveniently may be.

Reservation of Rights and privileges of Church of England with respect to Charities.

46. Nothing herein contained shall diminish or detract from any Right or Privilege which by any Rule or Practice of the Court of Chancery, or by the Construction of Law, now subsists for the Preference or the exclusive or special Benefit of the Church of *England*, or the Members of the same Church,[1] in settling any Scheme for the Regulation of any Charity, or in the Appointment or Removal of Trustees, or generally in the Application or Management of any Charity.

47. The Secretary for the Time being of the said

[1] The Charity is not to be applied to the furtherance or maintenance of religious views opposed to those of the founder, when the trust is only *generally* for the worship of God (7 Sim. 290); where the Charity was to "instruct children in literature and learning," the Court gives no preference to the Church of England (18 Law Times, O. S. 86); but if the founder was a Churchman, the Trustees should be Churchmen also (17 Law Times, O. S. 296); and where the Charity was given to the parishioners of ———, and for their education amongst other purposes, the education was confined to that according to the principles of the Church of England (Attorney-General *v.* Cullum, 1 Young and Collier, New Series, 411; Ilminster Free School, 31 Law Times, 225). The expression "in all godly learning and knowledge," used in 1549, held to mean the doctrines of the Church of England, and that Dissenters should not be the trustees of the Charity (Baker *v.* Lee, House of Lords, 2 Law Times, N.S. 701).

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Board shall by virtue of his Appointment be the Treasurer of Public Charities; and such Treasurer shall for the Purposes of taking, holding, conveying, assigning, transferring, and transmitting Real Property, including Leaseholds for Lives or Years, be a Corporation Sole by the Name of "The Treasurer of Public Charities," and by that Name shall have perpetual Succession, and plead and be impleaded before all Courts, Justices, and others.[1]

Secretary to be Treasurer of Charities; such Treasurer to be a Corporation.

48. Where any Land, or any Term or Estate therein, holden upon trust for any Charity, shall be vested in any Persons other than the Persons acting in the Administration and Application of the Rents; or where there shall be no Trustee thereof, or the Trustees, or any of them, shall be unwilling to act, or it shall be uncertain in whom such Land, Term, or Estate shall be vested, or all or any of the Persons in whom such Land, Term, or Estate shall be vested cannot be found, or shall be under Age, Lunatic, or of unsound Mind (whether found such by Inquisition or not), or otherwise incapable of acting, or shall be out of the Jurisdiction or not amenable to the Process of the Court of Chancery, or where by reason of the reduced Number of Trustees or other Causes a valid Appointment of new Trustees cannot be made, or where by reason of the Expenses incident to the Appointment of new Trustees, and the Conveyance or Assignment of such Land, Term, or Estate to such new Trustees, it shall appear to the Court of Chancery, or to any Judge of such Court or of any Court having Jurisdiction with respect to such Charity under this Act, desirable so to do, such Court or Judge may order[2] that such Land, Term, or Estate be vested in such Treasurer, and thereupon the same shall vest in such Treasurer and his Successors for all the Estate

Land holden upon trust for a Charity, subject to Jurisdiction of Court of Chancery and of Judge, may be vested in Treasurer.

[1] Altered and extended by section 15 of the Act of 1855.
[2] Altered and extended by section 15 of the Act of 1855.

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and Interest holden in trust for the Charity as aforesaid, without any Conveyance or Assurance thereof;

Proviso. but no such Vesting Order as aforesaid shall be made in respect of any Land, Term, or Estate as aforesaid, holden in Trust as aforesaid, vested in a Corporation, without the Consent of the Corporation: and no such Vesting Order shall take effect in respect of any Copyhold Land without the Consent of the Lord of the Manor; and the Court of Chancery, or such Judge, may direct such periodical or other Payment, as such Court or Judge may think fit, to be made to the Lord of the Manor, in compensation for Fines or other Profits which would have become due upon Death or Admittance of Tenants.

Orders may be made revesting Land, etc., in the Trustees of the Charity.

49. It shall be lawful for any Court or Judge by whom respectively any such Vesting Order may have been made, or for any other Court or Judge having Jurisdiction in the Matter, if it shall so seem fit to such Court or Judge, from Time to Time to order that all or any Part of the Land, Term, or Estate which shall for the Time being be vested in the said Treasurer by virtue of any such Vesting Order as aforesaid, shall be devested, and that the same shall be vested in the acting Trustees or Trustee for the Time being of the Charity; and such last-mentioned Order shall operate to vest such Land, Term, and Estate in the Trustees or Trustee therein named, without any Conveyance or Assurance.

Treasurer to be a Bare Trustee.

50. Subject to the Orders and Directions of the Court of Chancery or of any such Judge, such Treasurer shall be deemed a Bare Trustee, and shall permit the Persons acting in the Administration of the Charity[1] to have the Possession, Management, and Control of the Trust Estates, and the Application of the Income thereof, as if the same had been vested in them.

51. The Secretary for the Time being of the said

[1] See section 16 of Act of 1855.

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Board, and such[1] other public Officer or Officers as the Lord Chancellor shall appoint, shall be official Trustees of Charitable Funds, and where Trustees or other Persons having in their Names, or in the Name of any deceased Person of whom they are Representatives, in the Books of the Bank of *England*, or of the *East India* or *South Sea* Company, or of any other public Company, any Annuities, Stock, or Shares, or holding any Government or Parliamentary or other Securities in trust for any Charity, shall be desirous to transfer or deposit the same to or with the said official Trustees in trust for such Charity, or where any Person shall be desirous of transferring or depositing as aforesaid any Annuities, Stock, Shares, or Securities, for discharging any Legacy or Charge given or made to or for the Benefit of any Charity, or where it shall appear to the Court of Chancery, or to any Judge of such Court, or of any District Court of Bankruptcy, or[2] County Court having Jurisdiction under this Act, that any Annuities, Stock, Shares, or Securities, held in trust for any Charity, ought, for the Purpose of Security or convenient Administration, to be transferred or deposited as aforesaid, it shall be lawful for such Court or Judge to order the Transfer or Deposit of such Annuities, Stock, Shares, or Securities to or with such official Trustees.[3]

Judge may order Trustees, etc., holding Stock, etc., belonging to a Charity subject to his Jurisdiction to transfer same to Official Trustees.

52. The Secretary of the said Board shall keep separate Accounts of the Annuities, Stock, Shares, and Securities belonging to each separate Charity, and the said official Trustees shall pay the Dividends or Interest or Income thereof to the Trustees or Persons acting in the Administration of such Charity, or otherwise dispose thereof, and transfer such Annuities, Stock, Shares, or Securities (when Occasion shall require), as the Court of Chancery, or any Judge of such Court,

Secretary to keep separate Accounts of Funds of each Charity.

[1] See sections 17 & 18 of Act of 1855.
[2] See sections 12 & 22 of Act of 1855, and section 2 of Act of 1860
[3] See Act of 1855, section 25.

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or of any District Court of Bankruptcy, or County Court having Jurisdiction under this Act, or other lawful Authority, shall direct.

Trustees may deposit Deeds, &c., for Security in a Repository provided by the Board.

53. It shall be lawful for any Trustees or other Persons having the Custody of any Deeds or Muniments of or relating to such Charity to deposit the same for Security in a Repository, which may be provided by the said Board, subject to any Regulations to be made by the said Board under this Act.

Power to Board to frame Schemes for the Appropriation of Charitable Property to varied Trusts.

54. Where upon the Application of any Trustees or other Persons concerned in the Management or Administration of any Charity, or interested in the Benefits thereof (and after such Examination or Inquiry as the Board may think necessary in relation thereto), or upon any Report of an Inspector, or Information otherwise obtained by the said Board under this Act, with relation to any Charity, it shall appear to the said Board to be desirable to have a new Scheme[1] for the Application or Management of the Charity, and such new Scheme as contemplated or considered desirable by the Board cannot be, or it shall in the Opinion of the Board be doubtful whether it can be carried into complete Effect by the Court of Chancery, or by any District or County Court under the Jurisdiction created by this Act, or otherwise than by the Authority of Parliament, it shall be lawful for the said Board in every such Case provisionally to approve and certify such new Scheme in the Manner and subject to the Regulations hereinafter mentioned.

Notice to be given before Approval of Schemes, and Objections may be submitted for the Consideration of the Board.

55. One Month at least before any such new Scheme shall be so provisionally approved, Notice thereof shall be given in such Manner as the Board may in each Case consider proper or expedient for ensuring due Publicity, and every such Notice shall contain such Particulars of the proposed Scheme as the said Board think fit, and it shall be deemed by the said Board

[1] See Act of 1860, sections 2 to 5.

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sufficient to show the Nature of such Scheme, and where the Nature thereof cannot conveniently be shown in the said Notice, such Notice shall refer to some convenient Place within the Parish or District, and to the *Office in London of the Registrar of County Courts' Judgments*,[1] where a Copy of the proposed Scheme shall be deposited, and may be inspected, and every such Notice shall require any Objections to such Scheme to be stated or transmitted to the said Board or their Secretary within One Month from the time when the Notice shall have been given.

Board may alter or modify or approve of Schemes.

56. If after such Notice as aforesaid any Objections or Suggestions shall be made, the Board shall consider the same, and may thereupon, if to them it shall seem fit, alter or modify the Scheme according to any such Objections or Suggestions; and after all such Objections and Suggestions, if any, have been disposed of, or if no such Objections or Suggestions shall have been made, the Board, in case they shall not think fit to refer such Scheme to an Inspector under the Provision next hereinafter contained, may proceed to approve such Scheme, and to certify the same in Manner hereinafter mentioned.

The Matter of Schemes may be referred to an Inspector for local Inquiry.

57. Upon the Requisition of any Person interested in the Charity in question (in case the said Board after due Consideration shall be of Opinion that there are sufficient Grounds for complying with such Requisition), or in any other Case, if the said Board shall consider it desirable, the Matter of any Scheme in question may be referred by the said Board to One of their Inspectors, and such Inspector shall thereupon proceed to make a local Inquiry and Examination into the Matter of the Scheme in question, and for the Purposes of such Inquiry such Inspector may hold a Sit-

[1] By the 43d section of the Act of 1855 this section is to be construed and operate as if the words "The Office of the Board" had been inserted, instead of the words in italics.

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ting or Sittings in some convenient Place in the Parish or One of the Parishes or the District to or in which respectively the Charity in question is wholly or partially situated or is administered, and may take and receive any Evidence and Information, and hear and inquire into any Objections or Questions relating to the Scheme or Charity in question, and may from Time to Time adjourn any such Sitting, and public Notice shall be given by such Inspector of every such Sitting (except an adjourned Sitting) Fourteen Days at the least before the holding thereof, in such other Mode as in the Judgment of the said Board shall be sufficient to ensure Publicity.

Inspectors to report the Result of Inquiry to the Board.

58. Every Inspector to whom any such Matter shall be referred shall report in Writing to the said Board the Result of his Inquiry, and whether in his Opinion the Scheme in question should be approved with or without any Alteration or Modification thereof, and such Report shall specify or indicate the Alterations (if any) which such Inspector shall consider desirable, with the Reasons for the same, and also the Nature of the Objections (if any) which shall have been made to the Scheme, and the Opinion of the said Inspector thereon, and the said Board shall consider such Report, and if, as the Result of such Report or after further inquiry, they shall be satisfied therewith, they may proceed to approve the Scheme in question either with or without any Alteration, and to certify the same in Manner hereinafter mentioned.

Schemes when approved to be certified by the Board.

59. Every Scheme to be approved by the said Board shall be certified by them, and for that Purpose shall be embodied in a Certificate to be made by the said Board, and sealed with their Seal; and in every Case a Copy of such Certificate shall be deposited in some convenient Place within the Parish or One of the Parishes or the District in which the Charity in question shall wholly or partially be situated or adminis-

Copy of such Certificate to be deposited in the Parish or District,

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tered, and at the *Office in London*[1] of the Registrar of Country Courts' Judgments, and a Notice shall also be given, in such Manner as the Board shall direct, which Notice shall refer to the Certificate so deposited, and shall state the Intention of the Board to proceed with the Scheme thereby certified. and Notice given.

60. The said Board shall in the Month of *February* in every Year make a Report to Her Majesty of all their Proceedings during the preceding Year up to the Thirty-first Day of *December* then last past, and such Report shall, within Fourteen Days after the making thereof, be laid before both Houses of Parliament, if Parliament be then sitting, or otherwise within Fourteen Days after the Meeting thereof; and in such Report the said Board shall specially distinguish and set forth in full all the Schemes (if any) approved by them under the Provisions lastly hereinbefore contained, together with the Grounds of such their Approval and the Objections (if any) which have been made thereto, and all Proceedings had in respect of such Objections, and the Grounds on which any such Objections have been overruled; and in case it shall be enacted by any Act of Parliament that any such Scheme or Schemes so certified shall be confirmed and take effect, either with or without any Alterations or Modifications thereof respectively, every such Act shall be deemed a Public General Act. Annual Report to be laid before Parliament, which shall set forth all the Schemes approved.

61. *The Trustees or Persons acting in the Administration of every Charity shall, in Books to be kept by them for that Purpose, regularly enter, or cause to be entered, full and true Accounts of all Money received and paid respectively on Account of such Charity*,[2] and on or before the Twenty-fifth Day of *March* in every Year, or on or before such other Day as shall or may be fixed and appointed for that Purpose by the said Accounts of Trustees of Charities to be delivered to the Clerks of County Courts, Clerks of the Peace, and to the Board.

[1] See Note, section 55, *ante*.
[2] See section 45 of Act of 1855, and *infra*.

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Board, shall cause a Statement in Writing to be made of the Incomes and Revenues, whether actually paid or then due, and the actual Receipts and Expenditure of such Charity for the Year ending on the Thirty-first Day of *December* then next preceding, or on some other convenient Day to be fixed and appointed for that Purpose by the said Board, and also a Balance Sheet containing a clear Statement of the Balance of such Account, which Statement and Balance Sheet respectively shall be certified under the Hand of some One or more of such Trustees or persons (and audited by the Auditor of such Charity, if any there be); and as to every Charity whose gross annual Income for the Time being shall not exceed Thirty Pounds, every such Statement and Balance Sheet respectively, or a Duplicate or true Copy thereof respectively, shall be delivered or sent by such Trustees or Persons free of Charge to the Clerk of the County Court or some One of the County Courts (if more than One) to whose Jurisdiction such Charity may be subject under this Act (in case such Charity be subject to the Jurisdiction of any County Court under this Act), or if such Charity be not subject to the Jurisdiction of any County Court, then to the Clerk of the County Court for the District or any one of the Districts (if more than One) wherein or nearest adjoining whereto such Charity is established, or the Property thereof (in whole or in part) is situate or administered and distributed; and as to every Charity whose gross annual Income for the Time being shall exceed Thirty Pounds, every such Statement and Balance Sheet, or a Duplicate or true Copy thereof respectively (unless the said Board shall otherwise direct), shall be delivered or sent free of charge to the Clerk of the Peace for the County or the Division of the County, or some one of the Counties or Divisions of Counties (if more than One) in which the Charity is established, or the Pro-

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perty thereof is wholly or partially situated or administered and distributed; and every such Statement and Balance Sheet, or a Duplicate or true Copy thereof respectively, shall be kept and registered without Fee or Reward by the Registrar of County Courts' Judgments or the Clerk of such County Court, and the Clerk of the Peace of such County or Division respectively, and shall be open to the Inspection of all Persons, at all seasonable Hours, on Payment of the Sum of One Shilling to the Registrar or Clerk for every such Inspection; and any Person may require and have a Copy of any such Statement and Balance Sheet, or of any Part thereof, paying therefor to such Registrar or Clerk after the Rate of Twopence for every Seventy-two Words or Figures; and a Duplicate or Copy of every such Statement and Balance Sheet to be made according to the foregoing Provision, so certified and audited as aforesaid, shall be delivered or transmitted, through the Post or otherwise, free of Charge, by such Trustees or other Persons, to the said Board, on or before the said Twenty-fifth Day of *March* in every Year, or such other Day as may be fixed and appointed by the said Board as aforesaid; and the said Board may from Time to Time by any Order direct that the Statement and Balance Sheet, or a Duplicate or true Copy thereof respectively, of the Accounts of any Charity whose gross annual Income exceeds Thirty Pounds, shall be delivered or sent to the Clerk of the County Courts in the same Manner as if the Income of such Charity did not exceed Thirty Pounds; and the said Board may make and give such further and other Orders and Directions in relation to the Delivery and Publication of such Accounts, and the Form thereof, as they may think fit, which Directions and Orders shall be obligatory on and obeyed by all such Trustees and Persons as aforesaid.[1]

[1] This section by section 44 of the Act of 1855, is (except the por-

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Exemption from the Operations of Act.

62. This Act shall not extend to the Universities of *Oxford*, *Cambridge*, *London*, or *Durham*; or any College or Hall in the said Universities of *Oxford*, *Cambridge*, and *Durham*, or to any Cathedral or Collegiate Church, or to any Building registered as a Place of Meeting for Religious Worship with the Registrar-General of Births, Deaths, or Marriages in *England* or *Wales*, and *bona fide* used as a Place of Meeting for Religious Worship; nor shall this Act, for the Period of Two Years from the passing thereof, extend or be in any Manner applied to Charities or Institutions, the Funds or Income of which are applicable exclusively for the Benefit of Persons of the Roman Catholic Persuasion,[1] and which are under the Superintendence or Control of Persons of that Persuasion; nor shall this Act extend or be applied to the Commissioners of Queen *Anne's* Bounty, or to the *British Museum*, or to any Friendly or Benefit Society or Savings Bank, or any Institution, Establishment, or Society for religious or other charitable Purposes, or to the Auxiliary or Branch Associations connected therewith, wholly maintained by voluntary Contributions, or any Bookselling or Publishing Business carried on by or under the Direction of any Society wholly or partially exempted from this Act, so far as such Business is or shall be carried on by means of voluntary Contributions only, or the Capital or Stock of such Business; and where any Charity is maintained partly by voluntary Subscriptions and partly by Income arising from any Endowment, the Powers and

Provisions as to Charities supported

tion in italics) repealed as to all accounts not required to be rendered before the 14th August, 1855; and in lieu thereof, fresh provisions are substituted.

The Court of Chancery can compel accounts from the foundation of the Charity; but unless the misapplication has been very gross, the account would only be required from the last appointment of Trustees (3 Myl. & K. 147).

[1] See section 47 of Act of 1855, and the "Roman Catholic Charities Act," 1860, *infra*.

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Provisions of the Act shall, with respect to such Charity, extend and apply to the Income from Endowment only, to the Exclusion of voluntary Subscriptions, and the Application thereof; and no Donation or Bequest unto or in trust for any such Charity as last aforesaid, of which no special Application or Appropriation shall be directed or declared by the Donor or Testator, and which may legally be applied by the governing or managing Body of such Charity as Income in aid of the voluntary Subscription, shall be subject to the Jurisdiction or Control of the said Board, or the Powers or Provisions of this Act; and no Portion of any such Donation or Bequest as last aforesaid, or of any voluntary Subscription, which is now or shall or may from Time to Time be set apart or appropriated and invested by the governing or managing Body of the Charity, for the Purpose of being held and applied or expended for or to some defined and specific Object or Purpose connected with such Charity, in pursuance of any Rule or Resolution made or adopted by the governing or managing Body of such Charity, or of any Donation or Bequest in aid of any Fund so set apart or appropriated for any such Object or Purpose as aforesaid, shall be subject to the Jurisdiction or Control of the said Board or the Powers or Provisions of this Act; and nothing in this Act shall subject the Funds or Property of any Missionary or other similar Society, or the Missionaries, Teachers, or Officers of such Society, or of any Branch thereof, which Funds or Property shall not be within the Limits of *England* or *Wales*, to the Jurisdiction of the said Board: Provided always, that the said Exemption shall not extend to any Cathedral, Collegiate, Chapter, or other Schools.[1]

partly by voluntary Subscriptions.

63. It shall be lawful for any of the Charities exempted from the Operation of this Act, by Order

Exempted Charities may peti-

[1] See sections 48 & 49 of the Act of 1855.

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tion Commissioners to have Benefit of Act.

or Resolution duly made in conformity with the Constitution or Rules of such Charity (and which in that Case only shall be binding), to apply by Petition to the Commissioners to have the Benefit of this Act, either generally or as to any of the Provisions herein contained; and such Petition shall be under the Seal of such Charity if incorporated, and if not, then under the Hands of the major Part of the Trustees and governing Body of such Charity; and in such Case it shall be lawful for the Commissioners, if they shall think fit, to make an Order in conformity with such Application, and such Charity shall henceforth be entitled to and be bound by all the Provisions of this Act, if admitted generally thereto, or by such of the Enactments thereof, as shall be mentioned and specified in such Order of the Commissioners, but in either Case in the same Manner as if such Charity had not been exempted from this Act, or such Exemption had not extended to the Enactments specified in such Order.

Disputes among Members of exempted Charities may be referred to Arbitration of Commissioners.

64. Provided also, that if any Question or Dispute shall arise *among the Members* of any Charity[1] exempted from the Operation of this Act in relation to any Office, or the Fitness or Disqualification of any Trustee or Officer, or his Election or Removal, or generally in relation to the Management of the Charity, it shall be lawful for Two Thirds of the Members present at any Special Meeting, duly convened by Notice for the Purpose in the same Manner in which Meetings of such Charity are by the Rules thereof appointed to be held and convened, to refer such Question or Dispute to the Arbitration of the Commissioners, who *shall* accept such Reference, and act therein as Arbitrators, and their Award shall be

[1] By the 46th section of the Act of 1855, this section is to apply also to members of any Charity within the operation of the present Act.

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final, and may be made a Rule of Her Majesty's High Court of Chancery.

Legal Estate of Lands now vested in Municipal Corporations on Charitable Trusts to be vested in Trustees. (5 & 6 Will. 4, c. 76).

65. The legal Estate in all Lands which at the Time of the passing of the Act of the Session holden in the Fifth and Sixth Years of King *William* the Fourth, Chapter Seventy-six, was vested in the Body Corporate of any Borough which became subject to the Provisions of the said Act, or in any One or more of the Members of such Body Corporate, in his or their Corporate Capacity, solely or together with any Person or Persons elected solely by such Body Corporate, or solely by any particular Number, Class, or Description of Members of such Body Corporate, in whole or in part in trust or for the Benefit of any Charitable Uses or Trusts whatsoever, and which legal Estate shall not have been since duly conveyed or assured to and vested in the Trustees appointed by the Lord High Chancellor under the Provisions of the said Act, or such of them as shall be surviving and continuing Trustees, or otherwise lawfully conveyed, aliened, or disposed of by such Body Corporate or Member or Members thereof, shall from and immediately after the passing of this Act, and without any actual Conveyance, Assignment, or other Assurance thereof, be vested in the Trustees so appointed, or such of them as shall be surviving and continuing Trustees under such appointment as aforesaid, according to the respective Estates and Interests therein, and subject to such and the same Charges and Incumbrances and upon such and the same Trusts as the same were respectively subject to previously to such vesting; and in every Case, upon the Death, Resignation, or Removal of any of the Trustees, and upon any Appointment of any new Trustee or Trustees respectively, the legal Estate in the same Lands, and in all other Lands subject to any such Charitable Uses or Trusts which may for the Time being be

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vested in the Trustees or any of them, or in any Persons or the Heirs or Devisees of any Person who may have died, resigned, or been removed, shall vest in the Persons who after such Death, Resignation, or Removal, and such Appointment of such new Trustee or Trustees respectively, shall continue to be the Trustees for the Time being, without any Conveyance or Assurance whatsoever.

Interpretation of Terms.

66. In the Construction of this Act, except where the Context or other Provisions of the Act may require a different Construction, the Expression "Court of Chancery" shall mean and include the Master of the Rolls and every Judge of the Court of Chancery in *England;* the Expression "Lord Chancellor" shall mean and include the Lord Chancellor of *Great Britain* and the Lord Keeper and the Commissioners of the Great Seal of *Great Britain* for the Time being; the Expressions "District Court of Bankruptcy" and "District Court" shall mean and include every District Court of Bankruptcy established or to be established under the Act of the Fifth and Sixth Years of the Reign of Her present Majesty, Chapter Twenty-two, or under any other Act or Acts passed or to be passed for the Alteration or Amendment or the Extension of the same Act, or for the Establishment of any District Court or Courts of Bankruptcy in *England* or *Wales*, and every Commissioner or Judge of every such District Court; the Expression "County Court" shall mean and include every County Court holden or established or to be holden or established under the Act of the Ninth and Tenth Years of Her Majesty, Chapter Ninety-five, or any Act or Acts passed or to be passed for the Alteration or Extension of the same Act, and every Judge of any such Court; the Expression "Charity"[1] shall mean every *endowed* Foundation

[1] See section 48 of the Act of 1855, and definition of "endowment" below.

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and Institution taking or to take effect in *England* or *Wales*, and coming within the Meaning, Purview, or Interpretation of the Statute of the Forty-third Year of Queen *Elizabeth*, Chapter Four, or as to which, or the Administration of the Revenues or Property whereof, the Court of Chancery has or may exercise Jurisdiction; the Expression "Trustee" of any Charity shall mean and include every Person and Corporation seised or possessed of or entitled to any Real or Personal Estate, or any Interest therein, in trust for or for the Benefit of such Charity, or all or any of the Objects or Purposes thereof, and every Member of any such Corporation; and the Expression "the Board" shall mean the said Charity Commissioners sitting as a Board under this Act; and the Expression "Endowment"[1] shall mean and include all Lands and Real Estate whatsoever, of any Tenure, and any Charge thereon, or Interest therein, and all Stocks, Funds, Moneys, Securities, Investments, and Personal Estate whatsoever, which shall for the Time being belong to or be held in trust for any Charity, or for all or any of the Objects or Purposes thereof; and the Expression "Land" shall extend to and include Manors, Messuages, Buildings, Tenements, and Hereditaments, corporeal and incorporeal, of every Tenure and Description.

Extent of Act.

67. This Act shall not extend to *Scotland* or *Ireland*.

Short Title.

68. This Act may be cited as "The Charitable Trusts Act, 1853."

[1] Land purchased with voluntary contributions not an "Endowment:" which word refers to an endowment made for some specific purpose or trust. (See Governors of Charity for Poor Widows *v.* Sutton, 27 Beavan, 651).

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18 & 19 VICT. c. 124.

An Act to amend the Charitable Trusts Act, 1853.
[14th August, 1855.]

WHEREAS it is expedient to extend and amend the Charitable Trusts Act, 1853, as hereinafter provided: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

16 and 17 Vict. c. 137, and this Act to be construed together.

1. "The Charitable Trusts Act, 1853," hereinafter called "the principal Act," and this Act, shall be construed together as One Act, and any Provisions of the principal Act inconsistent with this Act are hereby repealed.

Provision as to the Salary of One of the Commissioners repealed.

2. So much of the principal Act (Section 4) as provides that after the Thirty-first Day of *March*, One thousand eight hundred and fifty-seven, an annual Salary shall be paid to One only of the Commissioners besides the Chief Commissioner is hereby repealed.

Power to appoint additional Inspectors.

3. It shall be lawful for Her Majesty and Her Successors, under the Royal Sign Manual, to appoint additional Inspectors (not exceeding Three in Number) for the Purposes of this Act and the Charitable Trusts Act, 1853, and such additional Inspectors shall hold Office during Pleasure, and shall be possessed of the same Powers, Authorities, and Jurisdiction, and be entitled to the same Privileges and Emoluments, as the Inspectors appointed under the said former Act of One thousand eight hundred and fifty-three.

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The Acts of the Board, how to be authenticated.

4. Every Act of the Board may be sufficiently authenticated by the Seal of the Commissioners, and the Signature of their Secretary, or, in his Absence, of the Chief Clerk.

Entries in and Extracts from the Books of the Board, how to be authenticated.

5. All Orders, Certificates, Schemes, and other Documents issued under the Seal of the Board, shall be deemed and taken to be the Originals, and Copies thereof shall be entered in the Books of the Board, and all such Entries may be sufficiently certified by the Signature of the Secretary, or, in his Absence, of the Chief Clerk: every Order, Certificate, Scheme, and other Document purporting to be sealed with the Seal of the Board, shall be received in Evidence without further Proof; and any Writing purporting to be a Copy extracted from the said Books, and to be certified as aforesaid, shall be received in Evidence in like Manner.

The Powers of the Commissioners and Inspectors to inquire into Charities extended.

6. The Board, or any Commissioner or Inspector, such Inspector acting under the Authority of the Board, may require written Accounts and Statements and Answers to Inquiries relating to any Charity, or the Property or Income thereof, to be rendered or made to them respectively by all or any of the following Persons; that is to say,

Trustees or Persons acting or concerned in the Administration of the Charity, its Property or Income, or in the Receipt or Payment of any Moneys thereof:

Agents of any such Trustees or Persons:

Depositaries of any Funds or Moneys of the Charity:

Persons in the beneficial Receipt of any Funds thereof, or of any Income or Stipend therefrom:

Persons having the Possession or Control of any Documents concerning the Charity or any Property thereof:

And the Board or the Commissioner or Inspector may require the Persons rendering or making any

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such Account, Statement, or Answer, to verify the same by Oath or otherwise, and may administer such Oath: Provided always, that nothing herein contained shall extend to give to the said Board or their Inspectors any Power of requiring from any Person holding or claiming to hold any Property whatsoever *adversely*[1] to any Charity, or free or discharged from any Charitable Trust or Charge, any Information, or the Production of any Deed or Document whatever in relation to the Property so held or claimed adversely, or any Charitable Trust, or Charge alleged to affect the same.

Power to require Trustees and others to attend and be examined.

7. The Board, or any Commissioner or Inspector acting as aforesaid,[2] may require all or any such Trustees and Persons as aforesaid to attend before them respectively at such Times and Places as may be reasonably appointed, for the Purpose of being examined in relation to the Charity, and to answer such Questions as may be proposed to them, and to produce upon such Examination any Documents in their Custody or Power relating to the Charity or the Property thereof, and may examine upon Oath or otherwise all such Persons and all Persons voluntarily attending, and may administer such Oath: Provided always, that no Person shall be obliged to travel in obedience to any such Requisition more than Ten Miles from his Place of Abode.

Precepts or Orders for the preceding Purposes, how to be made.

8. All Requisitions made under the foregoing Authorities shall be made respectively by the Order of the Board, or by Precept, under the Hand of the Commissioner or Inspector making the same.

Persons not complying with Requisitions, etc., to be deemed

9. Any Person refusing or wilfully neglecting to comply with any such Requisition, or with any Order of the Board, made under the Provisions of this Act or the principal Act, or destroying or withholding any

[1] See Sections 14 & 15 of the Act of 1853, *ante*.
[2] See section 6.

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Document required to be produced or transmitted by him, shall be taken to be guilty of a Contempt of the High Court of Chancery, and shall be liable to be attached and committed by such Court, on summary Application by the Commissioners to the same Court or to any Judge thereof, and shall pay such Costs attending such Contempt as the said Court or Judge shall direct: Provided always, that the Court may at any Time discharge, on such Terms as it may deem just, any Person attached or committed on any such Application, or on any Application made under Section Fourteen of the principal Act.

guilty of a Contempt of the Court of Chancery.

10. Where any Parish or Ecclesiastical District[1] entitled to the Benefit of a Charity has or shall have been divided into separate Parishes or Ecclesiastical Districts, and no Apportionment of Charities originally applicable to the Parish or District so divided shall have been made by Parliament or other competent Authority, the Board, in respect of all Charities the gross annual Income whereof does not for the Time being exceed Thirty Pounds, may apportion the Benefit of the Charity between each new Parish or District, or any Portion thereof taken from the Parish or District originally entitled to the whole Benefit, and the Remainder of such last-mentioned Parish or District, in such Manner and such Proportions as, upon a Consideration of the Purposes of the Charity, the Population of each Parish or District, and other Circumstances, they may think fit, and may also apportion the principal Endowments between such Parishes or Districts, if it be thought fit, and may

Power to apportion Parochial Charities after Division of Parishes.

[1] Whether under the Church Building Acts or the "New Parishes Acts," 1844 & 1856. See, as to apportionment of Charities in the former case by the (late) Church Building Commissioners, the 3d Geo. IV. c. 72, § 11. The Court of Chancery also has a power to apportion in such cases on petition; see the 8th & 9th Vict. c. 70, § 22. As to New Parishes, see 19 & 20 Vict. c. 104, §§ 26 & 31, Appendix A.

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appoint separate Trustees of any Part of the Endowments.[1]

Evidence as to annual Income of any Charity not exceeding 30*l*.

11. The Certificate of the Board, that according to their Judgment the gross yearly Income of any Charity does not for the Time being exceed Thirty Pounds, shall be sufficient Evidence of the Amount of such annual Income for the Purpose of determining the Jurisdiction under the foregoing Provision.

The Official Trustees of Charitable Funds may be empowered to call for Transfers to them of Stock, etc.

12.[2] Any Court or Judge having Jurisdiction to order the Transfer of Stock in the Public Funds, or Stock or Shares of any Public Company, to the Official Trustees of Charitable Funds, shall have Power also to authorize such Trustees to call for a Transfer of and to transfer such Stock or Shares, and may also order the Payment to the same Trustees of any Principal Moneys[3] of any Charity, under the same Circumstances in which the Transfer of Stock to them may now be ordered.

Notices to be given of certain Orders of the Board.

13. No Order for apportioning the Benefits of any Charity shall be made by the Board until after such public Notices shall have been given of the Proposal to make the same as the Board may consider expedient for ensuring Publicity in each Parish or District in which the Charity is or ought to be applied, or among all Persons interested therein, nor until after the Expiration of One Month from the Publication of such Notice; and every such Notice shall contain (so far as conveniently may be) sufficient Particulars of the proposed Order, to show the Objects thereof, and shall prescribe a Time within which any Objections thereto may be stated or transmitted to the Board.

14. All Objections which may be made to any pro-

[1] In Lambeth, the Charities were, by the Court of Chancery, subdivided among the thirteen districts into which that parish had been divided (22 L. J. Ch. 959).

[2] See Act of 1860, sects. 2 & 12.

[3] See as to investment, section 23.

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posed Order shall be considered by the Board, who may suspend the making thereof for further Inquiry, or may modify the same, as may be found expedient; and a Copy of every such Order when made shall, in the Case of any local Charity, be deposited for the space of One Month in some convenient Place within the Parish or One of the Parishes or the District in which the Charity is applicable, and also be open to Inspection at the Office of the Commissioners, and such Publicity shall be given thereto among all Persons interested in the Charity as the Board shall consider expedient; or if the Charity be not local, then a Copy of such Order shall be open to Inspection at the Office of the Commissioners, and public Notice thereof shall be given in such Manner as to the Board shall seem fit, and in Cases where there is a special Visitor, Notice shall be given to him.

Proceedings upon the Receipt of Objection or Suggestions.

15. The Secretary for the Time being of the Board shall be a Corporation Sole by the Name of "The Official Trustee of Charity Lands," for taking and holding Charity Lands, and by that Name (instead of the Name of "Treasurer of Public Charities") shall have perpetual Succession; and all Land, or Estates or Interests in Land now vested in the "Treasurer of Public Charities" by that Name shall become, upon the passing of this Act, and by virtue thereof, vested in like Manner, and upon the same Trusts, in the "Official Trustee of Charity Lands," and all Provisions of the Principal Act which have reference to the Treasurer of Public Charities shall operate as if the Name of the "Official Trustee of Charity Lands" had been used therein instead of the Name of "Treasurer of Public Charities."

The Official Trustee of Charity Lands constituted.

16. The acting Trustees of every Charity, or the Majority of them, provided that such Majority do not consist of less than Three Persons, shall have at Law and in Equity Power to grant all such Leases or

Power to acting Trustees to grant Leases.

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Tenancies of Land belonging thereto, and vested in the Official Trustee of Charity Lands, as they would have Power to grant in the due Administration of the Charity if the same Land were legally vested in themselves; and all Covenants, Conditions, and Remedies contained in or incident to any Leases or Tenancy so granted shall be enforceable by and against the Trustees or Persons acting in the Administration of the Charity for the Time being, and their Alienees or Assigns, in like Manner as if such Lands had been legally vested in the Trustees granting such Lease or Tenancy at the Time of the Execution thereof, and had legally remained in or had devolved to such Trustees or Administrators for the Time being, their Alienees or Assigns, subject to the same Lease or Tenancy.[1]

Appointments of Official Trustees of Charitable Funds regulated.

17. The Lord Chancellor may from Time to Time by Writing under his Hand appoint any Person to be, jointly with the Secretary for the Time being of the said Board, the Official Trustees of Charitable Funds, and remove any such Trustees; and every such Appointment or Removal shall be published in the *London Gazette*.

Such Trustees to have perpetual Succession, and may hold Funds in that Name.

18. The present Official Trustees of Charitable Funds, and their Successors, to be so appointed, shall have perpetual Successors by the Name of "The Official Trustees of Charitable Funds," and may hold by that Name Stock in the Public Funds, and Stock and Shares of any Public Company, Securities, and Moneys, which shall respectively devolve to their Successors, the Official Trustees of Charitable Funds for the Time being, without Transfer or Assignment.

Funds to vest in the Official Trustees for

19. All Stock in the Public Funds vested in the joint Names of *Henry Morgan Vane*, *Thomas Hare*, and *Walker Skirrow*, Esquires, the present Official

[1] See section 29 of this Act, and section 16 of Act of 1860.

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Trustees of Charitable Funds, shall upon the passing of this Act be transferred by the Governor and Company of the Bank of *England* from their Names to the Account of the Official Trustees of Charitable Funds. the Time being.

20. The Official Trustees of Charitable Funds shall, for the Purposes of their Trust, keep a Banking Account in their Official Name in the Books of the Governor and Company of the Bank of *England*, and the Secretary of the Board shall keep separate Accounts of the Moneys held upon such Account, and belonging to each separate Charity. The Official Trustees to keep Banking Account.

21. All Orders for payment of any Money held upon such Banking Account shall be signed by One at least of the official Trustees of Charitable Funds, not being the Secretary of the Board, and also by the Secretary, and shall be countersigned by one of the Commissioners, or shall be otherwise signed or authenticated in such Manner as the Lord Chancellor shall from Time to Time by Order under his Hand direct; and such Order shall be a sufficient Authority to the Bank paying the same for all such Payments. Mode of drawing on the Banking Account.

22. Any Trustee or other Person may, on obtaining an Order of the Board for the Purpose, transfer any Stock or pay any Money to the Official Trustees of Charitable Funds in trust for any Charity. Trustees may transfer Stock to Official Trustees.

23. All Principal Moneys belonging to any Charity directed to be paid to the Official Trustees of Charitable Funds, shall be paid to their Account at the Bank, and, subject to any Order of the Court or Judge or of the Board by which respectively the payment shall have been authorized, shall be forthwith invested in the Public Funds in the Names of the Official Trustees of Charitable Funds, for the Benefit of the Charity to which they shall belong. As to Disposal of Principal Moneys paid to them.

24. The Dividends arising from all Stock in the Public Funds standing in the Name of the Official All Dividends and Interest due

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to the Official Trustees of Charitable Funds to be placed to their Banking Account.

Trustees of Charitable Funds shall from Time to Time be received by the Governor and Company of the Bank of *England*, under the Authority of this Act, for the Credit of the said Official Trustees, and shall be placed to their Banking Account accordingly; and all Dividends and Interest arising from any other Stock, Shares, or Securities standing in the Name of or held by the Official Trustees of Charitable Funds shall be paid only to the Governor and Company of the Bank of *England* for the Account of the same Trustees; and the said Trustees shall from Time to Time execute to the said Governor and Company all such Powers as shall be found necessary for enabling them to receive and give effectual Discharges for the last-mentioned Dividends and Interest.

For the Regulation of Transfers and Payments to or by the Official Trustees.

25. No Transfer of any Stock, Shares, or Securities shall be made to the Official Trustees of Charitable Funds, nor shall any Money, other than the Dividends or Interest of any such Stock, Shares, or Securities as aforesaid, be paid to their Account, except in pursuance of an Order of the Court of Chancery, or of some Judge thereof, or of a District Court of Bankruptcy or County Court, or of the Board; and no Transfer of any such Stock, Shares, or Securities shall be made by the Official Trustees, except under the Order of such Court or Judge, or under the Order of the Board signed by Two Commissioners, or authenticated in such Manner as the Lord Chancellor from Time to Time by any Order under his Hand shall direct; and no Transfer to or by the Official Trustees shall be permitted by the Governor and Company of the Bank of *England* or any other Company contrary to this Provision.

Copies of Orders affecting the Account of the Official Trustees to

26. Copies of all Orders made by any Court or Judge for any Transfer or Deposit, Payment of Stock, Shares, Securities, or Moneys to or by the Official Trustees of Charitable Funds shall be forthwith trans-

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mitted to the Board by the Parties obtaining such Orders. be sent to the Board.

27. Every Order made under the principal Act or this Act, requiring or authorizing the Transfer, Payment, or Deposit of any Stock, Shares, Securities, or Moneys to or with the Trustees of any Charity or the official Trustees of Charitable Funds, or conferring a Right to call for or to make such Transfer, shall be a complete Indemnity to the Governor and Company of the Bank of *England* and all Companies and Persons for any Act done pursuant to such Order; and the said Governor and Company and other Companies and Persons shall be required to give effect or to conform to every such Order, and it shall not be necessary for them to inquire concerning the Propriety of such Order, or the Jurisdiction of the Court or Judge or the Board to make the same.[1] Indemity to the Bank and others.

28. All Dividends arising from any Stock in the Public Funds standing in the Name of the Official Trustees of Charitable Funds, and which shall be certified by the Board to the Governor and Company of the Bank of *England* to be exempt from the Property or Income Tax, shall be paid or carried to the Banking Account of the Official Trustees without any Deduction of such Tax; and all Dividends arising from any Stock in the Public Funds standing in any other Names or Name, and which the Board shall certify to the Governor and Company of the Bank of *England* to be subject only to Charitable Trusts, and to be exempt from such Tax, shall be paid without any Deduction thereof. Dividends on Stock in Name of Official Fund Trustees to be carried to Account free from Income Tax.

29. It shall not be lawful for the Trustees or Persons acting in the Administration of any Charity to make or grant otherwise than with the express Authority of Parliament, under any Act already passed or which may hereafter be passed, or of a Court or Judge of Restrictions of Charges and Leases of Charity Estates.

[1] See Act of 1860, sec. 23.

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competent Jurisdiction, or according to a Scheme legally established, or with the Approval of the Board, any Sale, Mortgage, or Charge of the Charity Estate, or any Lease thereof in Reversion after more than Three Years of any existing Term, or for any Term of Life, or in consideration wholly or in part of any Fine, or for any Term of Years exceeding Twenty-one Years.[1]

Sinking Fund to be provided for paying off Mortgagees in lieu of Provision in Mortgage Deeds.

30. So much of Section Twenty-one of the principal Act as requires a compulsory Provision to be inserted in every Mortgage for the Payment of the Principal Money borrowed by annual Instalments, and for the Redemption and Reconveyance of the Mortgaged Estates within the Period of not more than Thirty Years, is hereby repealed; but the Board authorizing any Mortgage to be made of any Charity Estate shall make such Provisions, by the same or any other Order, as to them may seem necessary, for directing the Trustees or Persons administering the Charity to discharge the Principal Debt or any Part thereof by such yearly or other Instalments within Thirty Years from the Date of the Security as to the said Board may seem fit; or to form an Accumulation or Sinking Fund out of the Income of the Charity for discharging the Principal Debt or any Portion thereof within the same Period, and shall give Directions as to the Investment and Accumulation of such Fund, and the Trustees for the Time being, or Persons administering the Charity, shall carry such Order into effect.

Extension of Power of Board as to Compromise of Claims.

31. The Twenty-third Section of the principal Act shall extend to Authorize a Compromise or Adjustment of any Claim, Demand, or Cause of Suit *against* any Charity, or the Trustees or Administrators thereof,

[1] This section affects the powers given in section 21 of the Act of 1853, and section 16 of this Act. The Act of 12 & 13 Vict. c. 26 (the Leases and Sales of Settled Estates Act), does not extend to Charities.

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and the Order of the Board in relation thereto shall have the like effect as in the Case of any Compromise or Adjustment for which Provision is made by the said Section.

Board may authorize Payment for Equality of Exchange or Partition.

32. The Board may authorize the Application of any Funds belonging to any Charity in Payment for Equality of Exchange or Partition, or in Payment of any Expenses incident thereto, or may authorize the Trustees to raise any Money for such Purposes by Mortgage of any Land acquired on such Exchange or Partition, or belonging to the Charity.

Power to ascertain Lands charged with Rents to Charities.

33. Where there shall be Uncertainty as to the specific Part of the Lands out of which any Rent, Annuity, or other Periodical Payment, not exceeding the yearly sum of Ten Pounds charged upon some Part of the same Lands for the Benefit of a Charity, shall be payable, it shall be lawful for the Board, upon the Application of the Trustees or Persons acting in the Administration of the Charity, and with the Consent of the Persons interested, *according to the aforesaid Definition of* "*Persons interested*,"[1] in the same Lands, to determine by their Order the Land charged with such Rent, Annuity, or other periodical Payment, which shall thenceforth stand charged with such Rent, Annuity, or periodical Payment accordingly, to the Exoneration of the Residue of such Lands therefrom.

Expenses of Exchanges and Partitions, and determining Application of Charges.

34. The Expenses incident to the Application for and procuring of any such Order of Exchange or Partition, or Order determining the Land charged with any Rent, Annuity, or periodical Payment, shall be paid by the Trustees or Administrators of the Charity, or by the other Parties to such Transactions, or by both, as the Board may direct.

[1] Unless this refers to the 6th section, which is doubtful, there would appear to be an omission, as there is no other definition of "Persons interested."

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Incorporated Charities and Trustees for Charities may reinvest in Land.

35. Any incorporated Charity, or the Trustees of any Charity, whether incorporated or not, may, with the Consent of the Board, invest Money arising from any Sale of Land belonging to the Charity, or received by way of Equality of Exchange or Partition, in the Purchase of Land, and may hold such Land, or any Land acquired by way of Exchange or Partition, for the Benefit of such Charity, *without any Licence in Mortmain.*

Order of Board for Investments to be carried into effect, and Costs to be raised.

36. All Orders of the Board for the Investment of Money coming to any Charity or the Trustees thereof on any Sale, Exchange, or Partition, shall be carried into effect by the Trustees or Persons administering the Charity; and all Moneys which the Board shall order to be provided out of any Income or Property of a Charity for the Payment of the Costs of any such Transactions shall be provided or raised by the Trustees and Administrators of the Charity, and applied accordingly.

Board may direct Official Trustees to convey Lands, etc.

37. It shall be lawful for the Board to authorize or order and direct the Official Trustees of Charity Lands and the Official Trustees of Charitable Funds respectively to convey Lands, and to assign, transfer, and pay over Stocks, Funds, Moneys, and Securities, as the Board shall think expedient.

Leases, etc., to be valid, notwithstanding disabling Acts.

38. All Leases, Sales, Exchanges, Partitions, and Transactions authorized by the Board under the principal Act or this Act shall be valid and effectual, notwithstanding the Act of the Thirteenth Year of the Reign of Queen *Elizabeth*, Chapter Ten, the Acts of the Fourteenth Year of the same Queen, Chapters Eleven and Fourteen, the Acts of the Eighteenth Year of the same Queen, Chapters Six and Eleven, the Act of the Thirty-ninth Year of the same Queen, Chapter Five, and the Act of the Twenty-first Year of the Reign of King *James* the First, Chapter One, or any disabling Act applicable to the Charity the

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Estates whereof shall be the Subject of any such Transaction.

Board may approve Schemes for letting Charitable Property.

39. It shall be lawful for the Board to prepare, and under their Seal to approve of, any Scheme for the letting of the Property or any Part of the Property of any Charity; and all Leases granted by any Trustees or Persons acting in the Management of any Charity pursuant to or in conformity with such Scheme shall be valid.[1]

Power to refer Bills of Costs in Charity Matters to Taxation.

40. The Board may order the Bill of Costs or Charges claimed by any Attorney or Solicitor on account of Business conducted or transacted by him on Behalf of any Charity, or the Trustees thereof, to be examined and taxed by the Taxing Masters of the Court of Chancery, or by the proper Taxing Officers of any of the Superior Courts at *Westminster*, who shall proceed to examine and tax the same Bill accordingly; and if the same shall be reduced upon such Taxation by the Amount of One Sixth Part or more of the Amount thereof, the Costs of the Taxation shall be paid by such Attorney or Solicitor, but otherwise out of the Funds of the Charity by the Trustees thereof; and the Board may, after being satisfied as to any Bill that it contains exorbitant Charges, order any such Bill to be so taxed, notwithstanding that the same may have been paid by the Trustees of the Charity at any Period not more than Six Calendar Months previously to such Order; and any Amount taxed off any such paid Bill shall be a Debt due from the Attorney or Solicitor to the Trustees of the Charity, and shall be forthwith paid by him to such Trustees accordingly.[2]

[1] This power, general as it is in terms, would doubtless be controlled by the Court of Chancery, within the ordinary limits imposed by the Court in the case of Charities.

[2] If the solicitor or attorney be a trustee, he will only be allowed costs out of pocket (2 Beavan, 128).

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Construction of sect. 27 of 16 & 17 Vict. c. 137.

41. Section Twenty-seven of "The Charitable Trusts Act, 1853," shall be construed and operate as if the Words "and the Trustees of the Charity shall be legally authorized to purchase and hold such Land" had been omitted therefrom; and incorporated Trustees of any Charity shall be competent to purchase and hold Lands for the Purposes mentioned in the same Section without Licence in Mortmain.

Deeds, etc., relating to Charities may be enrolled at the Office, and Copies to be Evidence.

42. Any Deed, Will, or Document relating to any Charity may be enrolled by the Board in Books to be provided and kept by them for that Purpose at their Office; and a Copy of any such Deed, Will, or Document made from such Books, and certified under the Hand of the Secretary or One of the Commissioners, shall be received as Evidence of the Contents of the same Deed, Will, or Document.

Construction of sects. 55 and 59 of 16 & 17 Vict. c. 137.

43. The Fifty-fifth and Fifty-ninth Sections of the principal Act shall be construed and operate as if the Words "the Office of the Board" had been inserted therein in the place of the Words "the Office in *London* of the Registrar of County Courts' Judgments."

Amendment of sect. 61 of 16 & 17 Vict. c. 137, and other Provisions made as to the annual Returns of Accounts by Trustees of Charities.

44. Section Sixty-one of "The Charitable Trusts Act, 1853" (except so much thereof as enacts that the Trustees or Persons acting in the Administration of every Charity shall, in books to be kept by them for that Purpose, regularly enter or cause to be entered full and true Account of all Moneys received and paid respectively on account of such Charity) shall be repealed *as to all Accounts which such Trustees or Administrators shall not have been bound to render before the passing of this Act;* and the Trustees or Administrators of every Charity shall, on or before the Twenty-fifth Day of *March* One thousand eight hundred and fifty-six, prepare and make out and transmit to the Board an Account of the Endowments[1] then belonging to the Charity, showing in the

[1] See section 66 of Act of 1853, "Endowment."

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Case of Realty not in hand the Manner in which the same is let or occupied, and in the Case of Personalty the existing Investment or Employment thereof, and in what Names such Investments are made; and such Trustees or Administrators shall also, on or before the Twenty-fifth Day of *March* next after the Acquisition of any Endowment, not included in the foregoing account, prepare and make out, in like Manner, and transmit to the Board a similar Account of such last-mentioned Endowment, and in case of any Alienation, or Charge, or Transfer of any Real or Personal Estate of the Charity, shall, on or before the Twenty-fifth day of *March* then next following, transmit to the Board an Account of such Alienation, Charge, or Transfer; and such Trustees or Administrators shall also, on or before the Twenty-fifth Day of *March* in every Year, *or such other Day as may be fixed for that purpose by the Board*,[1] *or as may have been already fixed for rendering the Accounts thereof required by the principal Act*, prepare and make out the following Accounts in relation thereto; (that is to say,)

(1.) An Account of the gross Income arising from the Endowment, or which ought to have arisen therefrom during the Year ending on the Thirty-first Day of *December* then last, or on such other Day as may have been appointed for this Purpose by the Board:

(2.) An Account of all Balances in hand at the Commencement of the Year, and of all Moneys received during the same Year on account of the Charity:

(3.) An Account for the same Period of all Payments:

[1] *Quære*, does this language enable the Board to vary the day in particular cases, or only generally in all cases from time to time?

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(4.) An Account of all Moneys owing to or from the Charity, so far as conveniently may be:

Which Accounts shall be certified under the Hand of One or more of the Trustees or Administrators, and shall be audited by the Auditor of the Charity, if any; and the said Trustees or Administrators shall, within Fourteen Days after the Day appointed for making out such Accounts, deliver or transmit a Copy thereof to the Commissioners at their Office in *London*, and in the Case of Parochial Charities shall deliver another Copy thereof to the Churchwarden or Churchwardens of the Parish or Parishes with which the Objects of such Charities are identified, who shall present the same at the next General Meeting of the Vestry of such Parishes, and insert a Copy thereof in the Minutes of the Vestry Book; and every such Copy shall be open to the Inspection of all Persons at all seasonable Hours, subject to such Regulations as to the said Board may seem fit; and any Person may require a Copy of every such Account, or of any Part thereof, on paying therefor after the rate of Twopence for every Seventy-two Words or Figures.

Board may make Orders as to Delivery and Publication of Accounts by Trustees, etc.

45. The Board may from Time to Time make such Orders as they may think fit in relation to the Delivery or Transmission of the said Accounts, and the Forms of such Accounts, and such Orders shall be executed by all Trustees and Persons from whom the Accounts to which they may relate are required.

Application of sect. 64 of 16 and 17 Vict. c. 137.

46. The Sixty-fourth Section of the principal Act shall apply as well to Members of any Charity within the Operation of that Act as to Members of any Charity exempted from the Operation thereof.

Acts not to apply to Roman Catholic Charities until 1st Sept., 1856.

47. Neither this Act nor the principal Act shall, until the First Day of *September* One thousand eight hundred and fifty-six, extend or be in any Manner applied to Charities or Institutions the Funds or Income of which are applicable exclusively for the Benefit of

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Persons of the Roman Catholic Persuasion,[1] and which are under the Superintendence and Control of Persons of that Persuasion; nor shall anything in this Act extend to any of the Cases which by the Sixty-second Section of the principal Act are excepted from the Operation thereof.

As to the Term "Charity."

48. In the Construction of the principal Act and this Act the Word "Charity" shall include every Institution in *England* or *Wales*[2] *endowed* for charitable Purposes, but shall not include any Charity or Institution expressly exempted[3] from the Operation of the Act of 1853, and Words applying to any Person or Individual shall apply also to a Corporation, whether sole or aggregate.

Acts not to extend to Eton or Winchester.

49. Nothing in this Act or in the principal Act contained shall extend to the Colleges of *Eton* and *Winchester*, or either of them.

Short Title.

50. This Act may be cited as "The Charitable Trusts Amendment Act, 1855."

[1] See "Roman Catholic Charities Act," 1860.
[2] "Endowed." See section 66 of Act of 1853.
[3] See section 62 of the Act of 1853.

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23 & 24 VICT. c. 136.

An Act to Amend the Law relating to the Administration of Endowed Charities.

[28th August, 1860.]

WHEREAS it is expedient to provide increased and inexpensive Facilities for the Administration of Endowed Charities: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

The Charitable Trusts Acts to be construed with this Act.

1. "The Charitable Trusts Act, 1853," and "The Charitable Trusts Amendment Act, 1855," and this Act shall be construed together as one Act, and any Provisions of the said former Acts inconsistent with this Act are hereby repealed.

Certain administrative powers to be exercisable by the Charity Commissioners.

2. The Board of Charity Commissioners for *England* and *Wales* (subject to the Restrictions and Rights of Appeal hereinafter provided) shall have Power from Time to Time, upon the Application of any Person or Persons who, under the Forty-third Section of "The Charitable Trusts Act, 1853," might be authorized to apply to any Judge or Court for the like Purposes, to make such effectual Orders as may now be made by any Judge of the Court of Chancery sitting at Chambers or by any County Court or District Court of Bankruptcy, (*a*) for the Appointment or Removal of Trustees of any Charity, or (*b*) for the Removal of any School Master or Mistress or other Officer thereof, or

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(*c*) for or relating to the Assurance, Transfer, Payment, or Vesting of any Real or Personal Estate belonging thereto, or entitling the Official Trustees of Charitable Funds, or any other Trustees, to call for a Transfer of and to transfer any Stock belonging to such Estate, or (*d*) for the Establishment of any Scheme for the Administration of any such Charity."[1]

Board to notify to Trustees of Charity their intention of exercising jurisdiction.

8. The said Board, previously to making any Order under the Jurisdiction vested in them by this Act, shall notify to the Trustees or Administrators (if any) of the Charity to be affected thereby their Intention of exercising such Jurisdiction, by Notice in Writing, to be delivered to them, or sent to them by the Post, at their last known Place of Abode in Great Britain or Ireland.

The powers to be exercisable over no Charities of which the gross income shall exceed 50*l.* without application of Trustees.

4. The said Board shall not make any Order, under the Jurisdiction vested in them by this Act, with respect to any Charity of which the gross Annual Income, exclusively of the Yearly Value of any Buildings or Lands used wholly for the Purposes thereof, and not yielding any Pecuniary Income, shall amount to Fifty Pounds or upwards, except upon the Application of the Trustees, or Persons acting in the Administration of the Charity, or a Majority of them, to be made to the said Board in Writing under their Hands if they shall not be incorporated, or under their Common Seal if they shall be incorporated, and the Board shall not make any Order removing any Trustee on the Ground only of his religious Belief.

The Board shall not exercise jurisdiction over contentious cases.

5. The said Board also shall not exercise the Jurisdiction hereby vested in them in any Case which, by reason of its *contentious Character* or of any special Questions of Law or of Fact which it may involve, or for other reasons, they may consider more fit to be adjudicated on by any of the Judicial Courts.

And see section 54 of Act of 1853.

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Notices to be given of certain orders, and objections or suggestions to be received.

6. No Order appointing or removing a Trustee, or establishing a Scheme for the Administration of any Charity, shall be made by the said Board before the Expiration of One Calendar Month after Public Notice of the Proposal to make such Order shall have been given, as they may consider most expedient and effectual for ensuring the Publicity thereof, in each Parish or District in which the Charity, if of a local Character, shall be applicable, or among all Persons interested therein; and no Order removing a Trustee or School Master or Mistress or other Officer of a Charity who shall have any known Place of Residence in *Great Britain* or *Ireland*, and who shall not be consenting to be discharged, shall be made before the Expiration of One Calendar Month after Notice of the Proposal to make such Order shall have also been delivered to him or her, or sent by the Post to such his or her Place of Residence, and until after sufficient Hearing of the Matter before the said Board, or some Member thereof, or one of their Inspectors; and every Notice hereby required shall contain (so far as conveniently may be) sufficient Particulars of the Objects of the proposed Order, and shall prescribe a reasonable Time within which any Objections thereto or Suggestions thereon may be made or transmitted to the Board; and the said Board shall receive and consider all such Objections and Suggestions, and may withhold, suspend, or modify their proposed Order, as they shall thereupon, or in the result of further Inquiry, or otherwise, think expedient.

Publication of Definitive Orders.

7. A Copy of every such Order when made shall, in the Case of any local Charity, be deposited for the Space of One Calendar Month in some convenient Place within the Parish or one of the Parishes or in the District in which the Charity shall be applicable, and shall be open to public inspection there at all reasonable Hours during the same period; and a Copy

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also of every such Order relating to any Charity, whether local or general, shall be kept open to public Inspection at all reasonable Hours, at the Office of the Commissioners, during a like Period of One Calendar Month; and in each case effectual Publicity shall be given to the making of the Order by such Means as the Board shall consider most expedient for that Purpose.

Power to Appeal against Orders of Board.

8. The Attorney-General, or any Person authorized by him or by the said Board, in the Case of any Charity, whatever may be the Yearly Income of its Endowments, and any Trustee or Person acting in the Administration of or interested in any Charity of which the gross Yearly Income to be calculated in Manner aforesaid shall exceed Fifty Pounds, or any two Inhabitants of any Parish or District in which the same shall be specially applicable, may within Three Calendar Months next after the definite Publication of any Order of the said Board appointing or removing a Trustee or Trustees, or for or relating to the Assurance, Transfer, Payment, or Vesting of any Real or Personal Estate, or establishing a Scheme for the Administration of the Charity, present a Petition to the High Court of Chancery in a summary way, appealing against such Order, and praying such Relief as the Case may require; and any Schoolmaster or Schoolmistress or other Officer removed by the Order of the Board, without the concurrence of the Trustees or Persons acting in the Administration of the Charity, or a majority of them, and without the Approval of a Special Visitor, if any, of the Charity, may, within Two Calendar Months (next after his or her Removal), appeal in like Manner against the Order of Removal; and the Court, upon or before the Hearing of any such Petition of Appeal as aforesaid, or at any Stage of the Proceedings, may require, if it shall think fit, from the said Board, their reasons for making the Order

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appealed against, or for any Part of such Order, and may remit the same to the Board for reconsideration, with or without any Declaration in relation thereto, or may make any substitutive or other Order in relation to the Matter of the Appeal, as it shall think just; and the Court may make any Order respecting the Costs, Charges, or Expenses incident to the Appeal, and may also, before hearing or proceeding with the same, require from any Appellant, other than the Attorney-General, proper Security for such Costs, Charges, and Expenses as may be eventually payable by him; but no such Petition of Appeal shall be presented by any Person, other than the Attorney-General, before the Expiration of Twenty-one Days after written Notice, under the Hand of such Appellant, of his or her Intention to present such Petition, shall have been delivered to the said Board at their Office.

Who may be the Respondent on Appeals.

9. The Attorney-General, if he shall think fit, or any Person authorized by him or by the said Board, may appear as the Respondent upon any such Appeal, and the Court may make any Order respecting the Costs, Charges, and Expenses of the Attorney-General or other Defendant.

Powers to be applicable to Charities vested in Corporations, etc.

10. The Jurisdiction vested by this Act in the said Board shall be exercisable with reference to Charities vested in any Corporation sole or aggregate, who, either solely or jointly with any other Person or Persons, shall also be the Recipients of the Benefit thereof.

Jurisdiction of the District Courts of Bankruptcy and County Courts enlarged.

11. The Jurisdiction vested by the Charitable Trusts Act, 1853, in the District Courts of Bankruptcy and County Courts, over Charities not possessing a larger gross Yearly Income than Thirty Pounds, shall be exercisable by the said Courts respectively for the like Purposes and under the like Provisions over Charities of which the gross Yearly Income for the Time being,

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to be calculated in Manner aforesaid, shall not exceed Fifty Pounds, in the same Manner as if the last-mentioned Limit to the Jurisdiction of the said Courts had been fixed by the said former Act.

Official Trustees of Charitable Funds may be empowered to receive Arrears of Dividends.

12. Any Court or Judge, or the said Board, having Jurisdiction to authorize the official Trustees of Charitable Funds to call for a Transfer of and to transfer any Annuities, Stock, or Scurities, may empower them also to receive and recover, in Trust for the Charity to which the same shall belong, all Dividends, Interest, and Income accrued from any such Annuities, Stock, or Securities respectively, and which shall for the Time being be in arrear.

Power to Magistrates to give Possession of School Buildings and Property held over by Officers or Recipients of Charities.

13. Where any School *Master* or *Mistress* or *other Officer*, or any *Recipient of the Benefit* of a Charity, being in possession by virtue of his or her Office, or as such Recipient, of any House, Buildings, Land, or Property of the Charity, shall have been removed from or shall cease to hold such his or her Office, or his or her Place, as such Recipient, but he or she, or any person claiming under him or her, shall refuse or neglect to relinquish the Possession of such House, Buildings, Land, or Property within One Calendar Month next thereafter, to his or her Successor, or to the Trustees or Persons acting in the Administration of the Charity, or as they shall direct, it shall be lawful for any Two or more Justices of the Peace acting for the District, Division, or Place in which such House, Buildings, Land, or Property shall be situate, in Petty Sessions assembled, and they are hereby required, on the Complaint of the said Trustees or Administrators, and on the Production of an Order of the said Board certifying such School Master or Mistress or other Officer or Recipient to have been duly removed from or to have ceased to hold his or her Office or Place (which Order under the Seal of the said Commissioner shall be conclusive Evidence of

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the Facts thereby certified, and of the Jurisdiction of the said Commissioners to make such Order for all the Purposes of this Enactment, and shall afford a complete Indemnity to all Persons thereunder), to issue a Warrant under the Hands and Seals of such Justices to any Constables or Peace Officers of the same District, Division, or Place, commanding them, within a Period to be thereby appointed, not being less than Ten or more than Twenty-one clear Days thereafter, to enter into the Premises, and deliver Possession thereof to the said Trustees or Administrators, or their Nominee or Agent, and to remove therefrom such former School Master or Mistress, or other Officer or Recipient, and all Persons claiming in his or her Right, as fully and effectually, and subject to the same Provisions, as nearly as the Case will permit, as Justices of the Peace are empowered to give Possession of any Properties to the Landlord or his Agent upon the Determination of the Tenancy thereof, under an Act passed in the First and Second Years of the Reign of Her Majesty, Chapter Seventy-four, for facilitating the Recovery of Possession of Tenements after the Determination of the Tenancy.

Masters and Mistresses of Endowed Schools to be removable.

14. [1]*Every* School Master or Mistress *appointed after the Date of this Act* shall be removable from his or her Office, *after reasonable Notice* by the Trustees or Persons acting in the Administration of the Charity, as they shall think expedient in the Interests thereof, so nevertheless that the Removal by virtue only of this Provision of a Master or Mistress who would be otherwise irremovable from his or her Office shall be determined on by all or a Majority of such Trustees or Administrators assembled at a Meeting convened by due Notice, delivered or sent by the Post to all such Trustees or Administrators who shall have any known Place of

[1] See section 22 of the Act of 1853.

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Residence in *Great Britain* or *Ireland*, by the Space of not less than Twenty-eight Days previously, for the special Purpose of considering and determining on the Question of such Removal, and of which intended Meeting a Notice shall also be delivered or sent in like Manner to the Master or Mistress by the same previous Space, and so also that the Resolution of the Meeting for the Removal of any such last-mentioned Master or Mistress shall be forthwith certified under the Hands of the Trustees or Persons acting as aforesaid who shall have concurred therein, or under the Hand of the Chairman of the Meeting, and shall within Seven Days next thereafter be transmitted to the said Board for their Approval, and the same shall not take Effect unless or until the same shall have been approved by the said Board, who may also, if they so think fit, fix the Time or any reasonable Conditions at or under which the same shall come into Operation; if also there shall be any special Visitor of the Charity who shall be resident in *Great Britain* or *Ireland*, and free from Incapacity, no Removal of any such last-mentioned Master or Mistress shall be made under the Authority only of the preceding Provision without the written Consent of such Visitor: Provided always, that this Section shall not apply to any Endowed Grammar School.

Sect. 21 of 16 and 17 Vict. c. 137 extended.

15. The Power vested in the said Board by the Twenty-first Section of "The Charitable Trusts Act, 1853," of authorizing the Application of Moneys belonging to any Charity, or to be raised on the Security of the Properties thereof, to the Improvement of such Properties, shall extend to authorize the Application of any like Moneys to any other Purpose or Object which the Board shall consider to be beneficial to the Charity or the Estate or Objects thereof, and which shall not be inconsistent with the Trusts or Intentions of the Foundation.

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A Majority of Trustees to have legal Power of dealing with the Charity Estates.

16. A Majority of *Two-thirds* of the Trustees of any Charity *assembled at a Meeting* of their Body duly constituted, and having Power to determine on any Sale, Exchange, Partition, Mortgage, Lease, or other Disposition of any Property of the Charity, shall also have a legal Power, on behalf of themselves and their co-Trustees, and also of the Official Trustee of Charity Lands, where his Concurrence would be otherwise required, to do, enter into, and execute all such Acts, Deeds, Contracts, and Assurances as shall be requisite for carrying any such Sale, Exchange, Partition, Mortgage, Lease, or Disposition into legal Effect, and all such Acts, Deeds, Contracts, or Assurances shall have the same legal Effect as if the same were respectively done, entered into, or executed by all the acting Trustees for the Time being, and by the said Official Trustee.

Official Trustee not to be accountable for Loss unless occasioned by his own neglect.

17. No Official Trustee of Charitable Funds, appointed under or in pursuance of the firstly or secondly recited Act, shall be chargeable with or accountable for any Loss or Misapplication of the said Charitable Funds, or the Dividends, Interest, or Income thereof, unless the same shall have been occasioned by or through his own wilful Neglect or Default.

Accounts to be laid before Parliament.

18. The Official Trustees of Charitable Funds shall lay before Parliament annually, on or before the Fourteenth Day of February, or as soon as practicable after Parliament shall be sitting, an Account of the total Amount of the Capital Stock, Shares, and Securities transferred to them in the Year ending the Thirty-first Day of December preceding, and of the total Amount of Moneys, other than Dividends or Interest, paid to them or to their Account during the same Period, and of the Investment thereof, and of the Capital Stock, Shares, and Securities sold or re-transferred by them during the same Period, and of the aggregate Amount of the Capital Stock, Shares,

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Funds, and Securities, and the Balance of Cash, held by them on such preceding Thirty-first Day of December.

Power to require the Transmission of Documents belonging to Charities.

19. The Board may require any Person having the Custody or Control of any Deed[1] or Document in which any Charity or Charities shall be solely interested to transmit the same to the Office of the said Commissioners for Examination; and where such Deed or Document shall not be held by any Person entitled as a Trustee or otherwise to the Custody thereof, the Board may either retain the same, for the Security thereof, in the Repository provided by them under the Sixty-third Section of "The Charitable Trusts Act, 1853," or, as they may think most advantageous to the Charity, may thereupon, or at any Time thereafter, return or issue the same to the Trustees or Persons acting in the Administration of the Charity, for the Purposes thereof.

Orders to be enforceable as under former Acts.

20. All Orders made by the said Board under the Provisions of this Act shall be enforceable by the same Means, and shall be subject to the same Provisions, as are applicable under the Charitable Trusts Act, 1853, and the Charitable Trusts Amendment Act, 1855, respectively, to any Orders of the said Board made thereunder.

Board to make Minutes.

21. The said Board shall from Time to Time make such Minutes as shall be required relative to the Institution and Conduct of their Proceedings under the Jurisdiction created by this Act.

Salary of the Secretary.

22. There shall be paid to the Secretary for the Time being of the said Commissioners, in consideration of the Increase and Extent of his Official Duties, such a Salary, not exceeding the Annual Sum of Eight hundred Pounds, in lieu of the Salary payable to him under the firstly-cited Act, as shall from Time to Time

[1] See section 12 of Act of 1853.

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be allowed by the Commissioners of Her Majesty's Treasury.

Indemnity to the Bank of England and others.

23. Every Order made under this Act under which any Stock, Shares, Securities, or Moneys shall be transferred or paid to or deposited with the Trustees of any Charity, or the Official Trustees of Charitable Funds, shall afford a complete Indemnity to the Governor and Company of the Bank of *England*, and to all Companies and Persons by whom respectively any such Transfer, Payment, or Deposit shall be permitted or made, for permitting or making the same, and the said Governor and Company and other Companies and Persons shall be required to give Effect or to conform to such Order, and it shall not be necessary for them to inquire concerning the Property of the same Order, or the Jurisdiction under which the same shall purport to be made.

Commissioners, etc., exempted from serving on Juries.

24. Every Commissioner, Secretary, and Inspector acting under or employed for the Purposes of the said Acts shall be exempt from serving on Juries while he shall be so acting or employed.

Short Title.

25. This Act may be cited for all Purposes by the Short Title of "The Charitable Trusts Act, 1860."

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23 & 24 Vict. c. 134.

An Act to Amend the Law regarding Roman Catholic Charities. [28th August, 1860.]

Whereas it is expedient that the Laws concerning Charities relating to or connected with the Roman Catholic Religion in *England* or *Wales* should be amended in the Particulars hereinafter provided for: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Charities for lawful Purposes not to be invalidated by the addition of unlawful Trust, but the Property may be apportioned, and the whole applied to lawful Purposes.

1. No Existing or Future Gift or Disposition of Real or Personal Estate upon any lawful Charitable Trust for the exclusive Benefit of Persons professing the Roman Catholic Religion shall be invalidated by reason only that the same Estate has been or shall be also subjected to any Trust or Provision deemed to be superstitious, or otherwise prohibited by the Laws affecting Persons professing the same Religion, but in every such Case it shall be lawful for the High Court of Chancery, or any Judge thereof sitting at Chambers, in exercise of the Jurisdiction created by the Charitable Trusts Act, 1853, upon the Application of Her Majesty's Attorney-General, or of any Person authorized for this Purpose by the Certificate of the Board of Charity Commissioners for *England* and *Wales*, or for the said Board upon the Application of the Person or Persons acting in the Administration of such Real or Personal Estate, or of a Majority of such Persons, to

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apportion the same Estate, or the Annual Income or Benefit thereof, so that a Proportion thereof, to be fixed by such Court or Judge, or by the said Board, as the Case may require, may be exclusively subject to the lawful Charitable Trusts declared by the Donor or Settler, and that the Residue thereof may become subject to such lawful Charitable Trusts for the Benefit of Persons professing the Roman Catholic Religion, to take effect in lieu of such superstitious or prohibited Trusts, as the said Court or Judge, or the said Board, may consider under the Circumstances to be most just; and also that it shall be lawful for the Court or Judge, or Board, making any such Apportionment by the same, or any other Order or Orders to establish any Scheme for giving Effect thereto, and to appoint Trustees for the Administration of the several Portions of such Real and Personal Estate, according to the Trusts established of the same Proportions respectively, and to vest the Estate to be so proportioned in the Trustees so to be appointed.

No proceedings to be instituted as to dealings with Roman Catholic Charities prior to 2 & 3 W. 4, c. 115.

2. No Proceedings at Law or in Equity shall be brought or instituted on account or in respect of any Dealings, Transactions, Matters, or Things with or concerning any Real or Personal Estate subject to any Use, Trust, Gift, Foundation, or Disposition for any Charity relating to or connected with the Roman Catholic Religion which took place prior to the passing of the Act of the Second and Third Years of the Reign of King William the *Fourth*, Chapter One hundred and fifteen:[1] Provided that nothing herein contained shall extend to sanction or exempt from such Proceedings as aforesaid the Fraudulent Misapplication or Conversion of any such Real or Personal Estate to any Private Use or Purpose not being Charitable.

[1] "An Act for the better securing the Charitable Donations and Bequests of His Majesty's Subjects in Great Britain professing the Roman Catholic Religon."

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Certain Deeds for Roman Catholic Charities not to be void if Enrolled within Twelve Months from passing of Act.

3. No Deed or other Assurance for any Charity relating to or connected with the Roman Catholic Religion made subsequently to the passing of the Act passed in the Ninth Year of the Reign of King George the *Second*, intituled "An Act to Restrain the Disposition of Lands whereby the same become Inalienable," and before the passing of this Act, shall be void or voidable by reason of the same not having been made, perfected, or enrolled in the Manner directed by the first-named Act, or otherwise, under the Provisions of the said Act, if such Deed or Assurance has been or shall be, within Twelve Months after the passing of this Act, enrolled in the High Court of Chancery: Provided that every Deed or Assurance for any such Charity as aforesaid coming within the Provisions of the Act passed in the Ninth Year of the Reign of King George the *Fourth*, intituled "An Act for Remedying a Defect in the Titles of Lands purchased for Charitable Purposes," shall have the Benefit thereof, notwithstanding anything herein contained.

9 Geo. 2, c. 36.

9 Geo. 4, c. 85.

Expense of Enrolment, how to be defrayed.

4. The Expense of the Enrolment of any Deed under the Third Section of this Act shall be defrayed out of the Property subject to the Charity to which the same may relate.

The Trusts of Charities in the absence of Settlements may be ascertained from the Usage.

5. Where any real or Personal Estate subject to any Use, Trust, Gift, Foundation, or Disposition for any Charity relating to or connected with the Roman Catholic Religion, shall have been applied upon any Charitable Trusts relating to or connected with the same Religion during any continuous Period of Twenty Years, but the Original Trusts of such Property shall not be ascertained by means of any written Document, the consistent Usage of the last preceding Twenty Years, or of the last Period of Twenty Years during which any consistent Usage in the Application of such Property shall have prevailed, shall be deemed

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to afford conclusive Evidence of the Trusts on which the same Property shall have been settled.

The Act not to prejudice past or pending proceedings or adverse possession.

6. Nothing in this Act contained shall extend to give Effect to any Use, Trust, Gift, Foundation, or Disposition heretofore made which has been already avoided in any Proceeding at Law or in Equity, or to prejudice any Suit at Law or in Equity commenced before the passing of this Act, or to affect any Property held or enjoyed beneficially by any Person or Persons at the Time of the Passing of this Act adversely to any such Use, Trust, Gift, Foundation, or Disposition.

Nothing in this Act to repeal provisions of 10 Geo. 4, c. 7.

7. Nothing in this Act contained shall be taken to repeal or in any Way alter any Provisions of an Act passed in the Tenth Year of His late Majesty King George the *Fourth*, intituled "An Act for the Relief of His Majesty's Roman Catholic Subjects," respecting the Suppression or Prohibition of the Religious Orders or Societies of the Church of Rome bound by Monastic or Religious Vows.

Interpretation of "Charity."

8. In the Construction of this Act, except where the Context or other Provisions of this Act shall require a different Construction, the Expression "Charity" herein contained shall be construed to mean and include the same Matters and Things as the like Expression means and includes in the "Charitable Trusts Act, 1853."

Short title.

9. This Act may for all Purposes be cited as "The Roman Catholic Charities Act."

Extent of Act.

10. This Act shall be confined in its Operations to *England* and *Wales*.

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23 Vict. c. 2.

An Act to Amend the Law Relating to Endowed Schools. [31st March, 1860.]

Whereas it is expedient that some Restrictions upon the Government and Teaching of certain Endowed Schools should be removed or modified: Be it enacted by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Power to Trustees of Endowed Schools to make Orders for the Admission of Children of Denominations herein stated.

1. It shall be lawful for the Trustees or Governors of every Endowed School from Time to Time to make, and they shall be bound to make, such Orders as whilst they shall not interfere with the Religious Teaching of the other Scholars as now fixed by Statute or other Legal Requirement, and shall not authorize any Religious Teaching other than that previously afforded in the School, shall nevertheless provide for admitting to the Benefits of the Schools the Children of Parents not in Communion with the Church, Sect, or Denomination according to the Doctrines or Formularies of which Religious Instruction is to be afforded under the Endowment of the said School: Provided that in the Will or Wills, Deed or Deeds, or other Instrument or Instruments regulating such Endowment, nothing be contained expressly requiring the Children educated under such Endowment to learn or to be instructed according to the Doctrines or Formularies of such Church, Sect, or Denomination.

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Act not to apply to certain Institutions, or to Scotland or Ireland.

2. This Act shall not apply to any of the Institutions mentioned in Section Twenty-four[1] of the Act the Third and Fourth of Victoria, Chapter Seventy-seven, intutled "An Act for Improving the Condition and Extending the Benefits of Grammar Schools," nor to any School established or to be established by or in union with or to be in union with the National Society for Promoting the Education of the Poor in the Principles of the Established Church, nor to any Institution maintained wholly by Voluntary Subscriptions, or partly by Voluntary Subscriptions and partly by School Payments, nor to *Scotland* or *Ireland*.

Short title.

3. This Act may be cited as "The Endowed Schools Act, 1860."

[1] 3 & 4 Vict. c. 77, sect. 24, not to extend to Universities of Oxford or Cambridge, or any college or hall within the same, the University of Durham, the Colleges of St. David's or St. Bees', the Grammar Schools of Westminster, Eton, Winchester, Harrow, Charterhouse, Rugby, Merchant Taylors', St. Paul's, Christ's Hospital, Birmingham, Manchester, Macclesfield, or Louth, or such schools as form part of any cathedral or collegiate church.

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MINUTES

OF THE

BOARD OF CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

MINUTES made by the BOARD OF CHARITY COMMISSIONERS FOR ENGLAND AND WALES, on the 20th day of November, 1860, relative to the Institution and Conduct of their Proceedings under the Jurisdiction created by the Charitable Trusts Act, 1860.

1. Every Application to the Board for an Order under the above-mentioned Jurisdiction shall be made in Writing, signed by the Applicants, *or by their authorized Solicitor or Agent*[1] (in that declared character); and every such Application not made by Her Majesty's Attorney-General shall show that the Applicants are competent to apply to the Board under the Act as

Trustees or Persons administering or claiming to administer the Charity the Subject of the Application;

[1] Since the above Minutes were issued the Board have decided that all applications to them under the jurisdiction created by the "Charitable Trusts Act, 1860," in respect of Charities whose annual income exceeds 50*l*., shall be signed by the trustees themselves, and not by a solicitor or agent on their behalf.

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Or Persons interested in the Benefits of the Charity;

Or Two or more Inhabitants of some Parish or Place within which the Charity shall be administered or applicable.

2. Every Application shall be intituled, in the Matter of the Charity to which it shall relate, by its usual Name or Designation, and shall state as far as conveniently may be—

The Parish or Locality for which (if of a local Character) it is founded, or within which it is administered or applicable;

The Endowments of the Charity;

The Objects of its Foundation;

The Amount of its annual or ordinary Income;

The actual Application of such Income;

The Names and personal Descriptions and Residences of the Trustees or actual Administrators of the Charity;

And all other Circumstances material to the specific Purposes of the Application.

3. If the Application shall not be made by all the Trustees or actual Administrators of the Charity, it shall state whether those who are not Parties to it are assenting to or dissenting from its Objects.

4. Every Application for the Appointment of Trustees, or for the Establishment of a Scheme for the Administration of any Charity, shall be made in general Terms for those Objects, but may be accompanied by any Proposal or Recommendation as to the particular Trustees or Scheme to be respectively appointed or established.

5. The Form No. 1 in the subjoined Schedule[1] shall be followed as nearly as conveniently may be for

[1] The forms referred to may be purchased of Messrs. Shaw and Sons, Fetter-lane, London.

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the Purposes of all Applications to the Board under the said Jurisdiction.

6. The Board may require any Application to be explained, amended, or altered in such Manner and so often as they may think fit, and all or any of the Statements on which it shall be founded, or any other Circumstances material to its Purposes, to be established by the Applicants by sufficient Evidences.

7. Notice in Writing of every Application to the Board, stating its Objects, shall be given by the Applicants to all Trustees or Administrators of the Charity not Parties to the Application, and when and as directed by the Board, to Her Majesty's Attorney-General, and to all Persons to whom in respect of any personal Rights or Interests liable to be affected by the Order to be thereupon made, or for any other Reason the Board shall think it fit that such Notice shall be given.

Such Notice may be in the Form No. 2 in the Schedule.

Similar Notice shall also be published by the Applicants for the general Information of all Persons interested in the Matter in all Cases in which the Board shall consider it desirable, and shall direct that such Publication shall be made.

Such last-mentioned Notice may be given in the Form No. 3 in the Schedule.

The Board will not proceed in the Matter of the Application until they shall have been satisfied that every such Notice directed by them to be given shall have been given accordingly.

8. The public Notice required by the Sixth Section of the Act of every Order proposed to be made by the Board appointing or removing a Trustee or establishing a Scheme (if relating to any parochial Charity) shall (unless otherwise directed by the Board in any special Case) be given in Writing, to be affixed for Fifteen

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Days at least to or near some principal Door of the Church of the Parish or District, or of each Parish or District (if more than one), in which the Charity shall be administered or applicable, and shall state that any Objections to or Suggestions on the proposed Order may be made or transmitted to the Board in Writing within Twenty-one Days from the Date of such Notice.

Such Notice may be in the Form No. 4 in the Schedule.

9. All Objections to any Order proposed to be made by the Board, and all Suggestions thereon, shall be made and transmitted to the Commissioners in the first instance, in writing, but the Board, so far as the Justice of any special Cases shall in their judgment require, as well as in the Cases provided for by the Act, will at the Request of the Parties, or at their own Discretion, require such Objections or Suggestions, or the Matter of the Application, to be heard, in such manner as they shall direct, before themselves or one or more of the Members of their Board, or any Inspector to be deputed by them for the Purpose.

10. The Board shall be at Liberty to proceed in the Matter of any Application, and to make any Order thereon, notwithstanding that these Minutes shall not have been fully complied with by the Applicants or others, in any Cases in which they shall be satisfied that such incomplete compliance is immaterial to the Justice of the Case.

11. These Minutes, or any of them, may be revoked, amended, or added to by the Board so often and in such Manner as they may think fit.

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Appendix E.

The Law of Simony is thus admirably summed up by Mr. Cripps, in his very able work on the "Laws of the Clergy," fourth edition:—

"It is not simony for a *layman*, or for a spiritual person "not *purchasing for himself*, to purchase, while "the church is full, either an advowson or next presentation, however immediate may be the prospect "of a vacancy, unless that vacancy is to be occasioned "by some agreement or arrangement between the "parties.

"Nor is it simony for a spiritual person to purchase "for himself an *advowson*, although under similar "circumstances.

"If either a layman or a spiritual person purchase "an advowson while the church is vacant, a presentation by the purchaser upon any future avoidance "after the church has been filled for that time is *not* "simony.

"It *is* simony for *any person* to purchase the next "presentation while the church is vacant.

"It is simony for a spiritual person to purchase for "himself the next presentation, although the church "be full.

"It is simony for any person to purchase a next "presentation,—or if the purchase be of an advowson, the next presentation by a purchaser would be "simoniacal,—*if* there is any agreement or arrangement between the parties at the time of the purchase "for causing a vacancy to be made.

"If any person purchase an advowson while the "church is vacant, a presentation by the purchaser for "that vacancy is simony."

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Appendix F.—Assignments of Patronage of Parc. 88, and other Statutes amending

District.	Patronage. To whom assigned.	Consideration.	Date.
Aldborough, St. Mary	A. L., Esq.	Church cost 500*l.*; repair fund, 166*l.* 13*s.* 4*d.* Consols; endowment, 997*l.* 10*s.* Consols.	Nov., 1844.
Bury, St. John	Bishop, on nomination of subscribers.	Church cost 3,353*l.*; repair fund, 166*l.* 18*s.*; endowment, rentcharge of 20*l.*	Sept., 1841.
Deptford, St. John.	Archdeacon Sinclair, for first appointment, then J. J. S. S. L., Esq.	Church cost 8,000*l.*; repair fund, 223*l.* 15*s.* 6*d.* Consols; endowment, 1,000*l.* and house.	June, 1855.
Norwood, Trinity, out of several parishes and districts.	J. C. Esq., on nomination of subscribers.	Church cost 6,000*l.*; repair fund, 336*l.* 2*s.* 8*d.* Consols; endowment, a house.	Jan., 1856
Sefton	Trustees, on nomination of subscribers.	Church cost 2,500*l.*; repair fund, 277*l.* 7*s.* 10*d.* Consols; endowment, 1,106*l.* 9*s.* 10*d.* Consols.	June, 1841
Sidmouth	Same	Church cost 2,350*l.*; repair fund, 143*l.* 16*s.* 11*d.* Consols; endowment, 553*l.* 5*s.* Consols.	April, 1840.

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ticular Districts formed under the 1st & 2d Will. IV. it, mentioned Chap. V. Division 2.

ACCOMMODATION.		Fees.	Offices.
In Pews.	In Free Seats.		
..	150	All—viz.: Marriages, churchings, baptisms, and burials.	All.
425	425	All . . .	All.
682	438	All except burials.	All, after next avoidance.
800	200	All except burials.	All, after next avoidance of the several churches as they occur respectively.
497	250	Baptisms and churchings.	None.
500		None . . .	None.

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ASSIGNMENTS AND TRANSFERS OF PATRONAGE of Parishes Acts." See

District or New Parish.	Population.	ENDOWMENT. Nature.	Amount.
Baldee	2,700	Money . .	150*l.* a-year.
Banbury, South .	2,669	Money . .	150*l.* ,,
		Tithe rent-charge	20*l.* ,,
		Land . . .	20*l.* ,,
Brompton . .	4,048	Money . .	150*l.* ,,
Cheltenham .	8,000	Money . .	150*l.* ,,
Hatcham . .	8,000	Money . .	150*l.* ,,
Wednesbury .	2,700	Money .	184*l.* ,,

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Districts and New Parishes under the "New Chap. V. Division 2.

In whom vested.	Consideration for Assignment.	Date.
G. H., Earl of, for first nomination,	1,666*l.* 13*s.* 4*d.* stock transferred to the Commissioners.	December, 1846.
now Viscount F., in perpetuity.	Church and repair fund of 150*l.* paid to Commissioners.	June, 1843.
Crown and Bishop alternately,	..	
now Bishop on nomination of Rev. W. W. (Vicar.)	Tithe rent-charge 20*l.* a-year.	December, 1845.
	Land of annual value of 20*l.* belonging to the vicarage.	May, 1852.
Rev. W. C. and Miss C., for first two nominations,	3,333*l.* 6*s.* 8*d.* stock towards endowment.	April, 1847.
now same persons in perpetuity.	Church . . .	,,
Five Trustees, nominated by Committee of "Church Extension Fund."	1,666*l.* 13*s.* 4*d.* towards endowment, 2,000*l.* towards church, 240*l.* towards repair fund.	August, 1845.
Alex. R., first nomination,	1,500*l.* towards endowment, 500*l.* towards church.	June, 1845.
then Crown and Bishop,		
now Rev. A. K. B. G.	Parsonage house . .	August, 1857.
Crown and Bishop,	..	May, 1844.
now N. B., Esq.	1,000*l.* towards endowment.	May, 1855.

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Appendix G.

ORDINATION FORMS AND PAPERS.

(Referred to *ante*, Chap. III.)

1. *Form of Testimonial required for Deacons or Priests' Orders:—*

To the Reverend , Lord Bishop of

We, whose names are hereunder written, testify and make known, that C. D. clerk, A.M. *(or other degree)*, to be licensed to the curacy of , in the county of , in your Lordship's Diocese of , hath been personally known to us for the space of three years last past; that we have had opportunities of observing his conduct; that, during the whole of that time, we verily believe that he lived piously, soberly, and honestly, nor have we at any time heard any thing to the contrary thereof; nor hath he at any time, as far as we know or believe, held, written, or taught, any thing contrary to the doctrine or discipline of the United Church of England and Ireland; and, moreover, we believe him in our consciences to be, as to his moral conduct, a person worthy to be licensed to the said cure.

In witness whereof we have hereunto set our hands this day of , in the year of our Lord

E. F. *Rector of* G. H. *Vicar of*
I. K. *Rector of*

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If any of the subscribers are not beneficed in the Diocese of the Bishop to whom the testimonial is addressed, the counter-signature of the Bishop of the Diocese wherein their benefices are respectively situate is required.

If the clerk nominated has not been ordained three years, the testimonial need only be for the period elapsed since his ordination.

2. *Si quis:*—

Notice is hereby given, that M. N. [of College, B.A.], now resident in this parish [or chapelry], intends to offer himself as a Candidate for the holy office of a Deacon at the ensuing Ordination of the Lord Bishop of , and if any person knows any cause or just impediment why the said M. N. ought not to be admitted into Holy Orders, he is now to declare the same, or to signify the same forthwith to the Lord Bishop of .

We certify that, on Sunday, the day of instant, the foregoing Notice was publicly and audibly read by the undersigned C. D. in the Church [or Chapel] of , in the time of divine service, and that no impediment was alleged.

Witness our hands this day of , 18 .

C. D. *Officiating Minister.*
E. F. *Churchwarden.*

3. *Forms of Nominations to Curacies:*—

Form No. I. is, Where the Incumbent is Non-resident.

Form No. II. is, Where the Incumbent is Resident.

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I. *Form* of Nomination of a Curate, if the Incumbent is NON-RESIDENT.

To the Reverend , Lord Bishop of

I, A. B., of , in the county of , and your Lordship's Diocese of , do hereby nominate C. D., Bachelor of Arts *(or other degree)*, to perform the office of curate in my church of aforesaid, in the place of E. F., late licensed curate thereof *(this to be omitted if not in the place of another curate)*, and do promise to allow him the yearly stipend of , to be paid by equal quarterly payments [*as to amount of stipend, see Act* 1 & 2 *Vict. c.* 106, *sects.* 84, 85, 86, *&c.*], with the surplus fees, amounting to per annum *(if they are intended to be allowed)*, and the use of the glebe-house, garden, and offices which he is to occupy *(if that be the fact; if not, state the reason, and name where and at what distance from the church the curate purposes to reside)*: and I do hereby state to your Lordship that the said C. D. does not serve any other parish as incumbent or curate; and that he has not any cathedral preferment nor any benefice, and does not officiate in any other church or chapel *(if, however, the curate does serve another parish as incumbent, or as curate, or has any cathedral preferment, or benefice, or officiates in any other church or chapel, the same respectively must be correctly and particularly stated)*: that the net annual value of my said benefice, estimated according to the said Act, sects. 8 and 10, is , and the population thereof, according to the latest Returns of Population made under the authority of Parliament, is : that there is only one church belonging to my said benefice *(if there be another church or chapel, state the fact)*; and that I

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was admitted to the said benefice on the day of 18 .

Witness my hand this day of , in the year of our Lord 18 .

[*Signature and Address of*] A. B.

"Declaration," required to be added by 28 & 29 Vict. c. 122.

I, A. B., Incumbent of , in the county of , *bonâ fide* undertake to pay to C. D., of , in the county of , the annual sum of pounds as a stipend for his services as curate, and I, C. D., *bonâ fide* intend to receive the whole of the said stipend.

And each of us the said A. B. and C. D. declare that no abatement is to be made out of the said stipend in respect of rent or consideration for the use of the glebe-house; and that I, A. B., undertake to pay the same, and I, C. D., intend to receive the same, without any deduction or abatement whatsoever.

Witness our hands this day of , 18 .

[*Signatures of*] A. B.
C. D.

II. *Form* of Nomination of a Curate, if the Incumbent is RESIDENT:—

To the Reverend , Lord Bishop of

I, A. B., of , in the county of , and your Lordship's Diocese of , do hereby nominate C. D., Bachelor of Arts *(or other degree)*, to perform the office of assistant curate in my church of aforesaid, in the place of E. F., late licensed curate thereof *(this to be omitted if not in the place of another curate)*; and do promise to allow him the yearly stipend of , paid by equal

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quarterly payments;[1] and I do hereby state to your Lordship that the said C. D. intends to reside in the said parish *(if C. D. does not intend to reside in the parish, then state at what place he intends to reside, and its distance from the said church)*; and that the said C. D. does not serve any other parish as incumbent or curate; and that he has not any cathedral preferment or benefice, and does not officiate in any other church, or chapel, *(if, however, the curate does serve another parish as incumbent or as curate, or has any cathedral preferment or a benefice, or officiates in any other church or chapel, the same respectively must be correctly and particularly stated)*.

Witness my hand this day of , in the year of our Lord 18 .

[*Signature and Address of*] A. B.

4. Stipendiary Curates' Declaration required to be added to the above by the Clerical Subscription Act, 1865 (28 & 29 Vict. c. 122):—

"I, A. B., Incumbent of , in the County "of , *bonâ fide* undertake to pay C. D., "of , in the County of , the "annual Sum of Pounds as a Stipend "for his Services as Curate, and I, C. D., *bonâ fide* "intend to receive the whole of the said Stipend.

"And each of us the said A. B. and C. D. declare "that no Abatement is to be made out of the said "Stipend in respect of Rent or Consideration for the "Use of the Glebe House; and that I, A. B., under-

[1] When the stipend is paid either in whole or in part by one of the Religious Societies, it should be added thus, "So long as the Society shall provide me with the same for that purpose;" or, "£ thereof agreed to be provided by the Society, and £ thereof by myself."

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"take to pay the same, and I, C. D., intend to receive "the same, without any Deduction or Abatement "whatsoever."

Witness our hands this day of 18 .

[*Signatures of*] {A. B. C. D.

5. The form of "*Declaration of Assent*" required to be made by every *Candidate for Holy Orders*, and by every *Curate and Incumbent*:—

I, A. B., do solemnly make the following Declaration:—I assent to the thirty-nine Articles of Religion, and to the Book of Common Prayer, and to the Ordering of Bishops, Priests, and Deacons. I believe the Doctrine of the United Church of England and Ireland, as therein set forth, to be agreeable to the Word of God: and in public Prayer and Administration of the Sacraments I will use the Form in the said book prescribed, and none other, except so far as shall be ordered by lawful authority.

6. The form of "*The Declaration against Simony*" required to be made by every *Incumbent*, Lecturer, and Preacher:—

I, A. B., solemnly declare that I have not made by myself, or by any other person on my behalf, any payment, contract, or promise, of any kind whatsoever, which to the best of my knowledge or belief is simoniacal, touching or concerning the obtaining the preferment of ; nor will I at any time hereafter perform or satisfy in whole or in part any such kind of payment, contract, or promise made by any other without my knowledge or consent.

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7. The oath of Canonical Obedience.

I., A. B., do swear that I will pay true and canonical obedience to the Lord Bishop of and his successors in all things lawful and honest. So help me God.

N.B. This oath is expressly excepted from the operation of the Clerical Subscription Act, 1865 (see sec. 12).

8. The oath of Allegiance as substituted for the former oath of allegiance and supremacy, by the 31 & 32 Vict. c. 72, secs. 2, 8.

I, A. B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors according to law. So help me God.

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Appendix H.—No. 1.

PRIVILEGES OF THE CLERGY.

"*Confessions.*"

The 113th of the Canons of 1603 (which are binding upon the Clergy) provides: "That if a man confess his secret and hidden Sin to the Minister for the unburdening of his Conscience, and to receive Spiritual Consolation and Ease of Mind from him, we do not in any way bind the said Minister by this our Constitution" (the Canon had been before providing for making Presentment of Crimes to the Ordinary), "but do straightly charge and admonish him that he do not at any Time reveal and make known to any person whatever any Crime or Offence so committed to his Trust and Secrecy (except they be such Crimes as by the Laws of this Realm his own Life may be called into question for concealing the same) under pain of irregularity."

The Rubric, in the Order for the Visitation of the Sick, says: "Here shall the Sick Person be moved to make a special Confession of his Sins if he feel his Conscience troubled with any weighty Matter." This Rubric is part of the Law of the Land (13 & 14 Car. II. c. 4). See also Exhortation to the Holy Communion and the Homily of Repentance.

The Secrecy of Confession is the Privilege, not of the Priests, but of the Penitent.

Confession, then, being recognized generally by the

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Canons, and being enjoined specially by the Rubric,—both of which are binding upon the Clergy, and the latter upon the Laity also,—it follows (notwithstanding high opinions and some *apparent* judicial decisions to the contrary) that matter revealed in confession to a Clergyman should not be disclosed by him; and that he cannot be lawfully compelled to do so under any circumstances, unless (*a*) in the particular cases specified in the Canon, or (*b*) with the sanction of the person by whom the matter in question was revealed.

This, however, does not apply to knowledge, even to the same effect as the matter so revealed, acquired, *aliunde*, by the Clergyman.

(See further "Privilege of Religious Confession," by E. Badely. Butterworths, 1865).

APPENDIX H.—No. 2.

CHURCH BUILDING—HINTS AS TO.

THE following most valuable "Hints on Church Building," by the Venerable Archdeacon Sinclair, are added with his kind permission:—

Sites.

If land is to be conveyed for ecclesiastical purposes to private individuals as trustees, under the Common Law, no special facilities are afforded by any Act of Parliament; and if the requirements of the Mortmain Acts are not complied with, the arrangement will be void. But if it is to be conveyed to the Ecclesiastical

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Commissioners,[1] the most effective facilities are provided. By the 58th Geo. III. c. 45, § 33, sites for churches and churchyards may be conveyed to the Commissioners, either with or without a valuable consideration; and any quantity of land, not exceeding ten acres, with or without a house, may be conveyed as a site for a parsonage or as a glebe. The grant may be made by owners in fee, including the Crown; by the officers of public departments; by bodies politic, corporate, and collegiate; by corporations, aggregate or sole, not being trustees; as well as by trustees of hospitals, schools, charitable foundations, and other public institutions (3 Geo. IV. c. 72, § 1).

The above-named parties, together with the lord of the manor, may enfranchise copyhold lands; lords and ladies of manors also may convey waste lands, and the rights of commoners are thereby extinguished (58 Geo. III. c. 45, § 38).

Provision is further made (§ 36) that lands, to the above extent, may be conveyed for a valuable consideration by trustees, guardians, committees, and other incapacitated persons.

The conveyance, if made in the form prescribed by the 2nd section of 3rd Geo. IV. c. 72, will be exempt from stamp duty, and from enrolment in Chancery.

It is desirable, when it can be done, to obtain a site for the parsonage, as well as for the church, at the outset.

Large powers of granting, bequeathing, or selling, not only sites for churches, but lands, goods, &c., for endowments, are given by the Act 6 & 7 Vict. c. 37, § 22, commonly called "Sir Robert Peel's Act," and the two New Parishes Acts, 7 & 8 Vict. c. 94, and 19 & 20 Vict. c. 104, the latter of which is commonly called "Lord Blandford's Act."

[1] In the Church Building Acts, Her Majesty's Commissioners for Building Churches are named, but their powers are now transferred to the Ecclesiastical Commissioners.

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Plans.

It is not advisable in any case to build a church without an architect and clerk of the works. The architect's commission is five per cent.: he is not entitled to a commission upon works omitted in the contract. There ought to be a clear understanding, that if the tenders for the church are more than five per cent. above the estimate, the building committee shall be at liberty to put his plans aside without incurring any cost. When competition has been resorted to, great injustice may otherwise be done to the unsuccessful architects. The clerk of the works is usually paid at the rate of about two guineas a-week. Much depends on his integrity and ability.

The contract should include foundations, drains, roads, and fences; a bell or bells, a pulpit and reading-desk, a communion table and rails, pews and sittings; the pews to be either with or without doors. A time is usually specified in the contract when, under a penalty, the building must be completed.

Besides the contract, there are other expenses to be provided for; such as law costs, consecration fees, warming and lighting, communion plate, furniture, as well as paving and lighting the outside of the church. In case an organ is either purchased or hired, both the architect and organ-builder should be consulted with regard to its position. It is desirable that some effective mode of ventilating as well as warming the church should be decided on before the building is commenced. Sufficient means of egress should be provided.

The size of the pews should not be less than thirty inches from front to back, and twenty inches in width for each adult; and for children's sittings, fourteen inches should be allowed. The backs should slope to the extent of three or four inches.

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The pews, except in special cases, should all face the east, and be all constructed alike. Accommodation should seldom be provided for more than 1,200 persons in one church. Pews or sittings, the occupants of which can only see and hear with difficulty, if at all, augment the cost without increasing the utility of the edifice. For this reason massive columns are objectionable. The roof of the church should be carefully felted as well as ploughed and tongued; provisions should also be made by gratings for a free circulation of air below the floor, to prevent dry rot. A lightning conductor should not be overlooked.

In the churches of new parishes constituted by Orders in Council passed under the "New Parishes Acts," one-half of the pews and sittings must not only be free, but "as advantageously situated as the others." If endowments are afterwards provided, a proportionate number of pews and sittings that are let may be set free in exchange.

Funds.

In most cases, contributions may readily be obtained from a few liberal individuals; the difficulty is to prevail upon the inhabitants of the parish or district generally to give according to their ability. For this purpose, it is desirable that personal applications should be made to all, whether rich or poor, and that opportunity should be afforded them not only to give large donations, but small monthly and weekly subscriptions.

Applications for aid may be made to the Incorporated Society for Building and Enlarging Churches (No. 7, Whitehall); to the Diocesan Society; and to the trustees of the Marshall Fund (9 King-street, Southwark).

Marshall's Charity was at first only applicable to

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the augmentation of small benefices. By the recent Act of Incorporation, however, the trustees are enabled to assist in building churches, provided the patronage is vested in the bishop of the diocese.

Parsonage Houses.

After a new church has been consecrated, a district assigned to it, and an income provided for the minister of not less than 45*l.* a-year, applications may be made to the Governors of Queen Anne's Bounty (Dean's-yard, Westminster) for a grant towards providing a parsonage-house. The grant is usually voted by the Governors, on being satisfied that it is justified by the circumstances of the case, and that a benefaction has been raised to meet it, sufficient with the grant either to purchase or to build a suitable residence. Diocesan Societies usually contribute towards this object.

Marshall's Trustees also vote grants for parsonages.

Under the provisions of the Act 19 & 20 Vict. c. 104, § 27, any body or person may give, grant, or convey to the Ecclesiastical Commissioners any messuage, lands, tenements, or hereditaments for the purpose of a parsonage.

Endowments.

These may consist of lands, tithes, money, or a parsonage-house. When other property than money is settled, the provisions of the Statute of Mortmain must be observed, except so far as that statute is modified by the Church Building or New Parishes Acts, otherwise the arrangement will be void. Under this statute (9 Geo. III. c. 36) all conveyances must be by deed, to be executed and enrolled in Chancery,

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during the lifetime of the donor, and to take immediate effect.

Allusion has been already made to the 6th & 7th Vict. c. 37, under which the Ecclesiastical Commissioners may endow (§ 9) districts for which churches have not been built; and the patronage (§ 20) of districts may be conferred upon contributors to the endowment or to the erection of churches; and lands (§ 22) may be for this purpose conveyed to the Ecclesiastical Commissioners, without regard to the Statute of Mortmain.

The Governors of Queen Anne's Bounty make grants to augment endowments, under the powers of various Acts of Parliament; and Ecclesiastical Impropriators are empowered to appropriate and permanently assign portions of their benefices to chapelries and churches, within the limits of such benefices (17 Car. II. c. 3; 29 Car. II. c. 8; 1 & 2 Will. IV. c. 45; 6 & 7 Vict. c. 47, § 29).

Consecration.

When a church is nearly completed, notice should be sent to the registrar of the diocese, that he may have time to prepare the necessary papers before the day of consecration.

Churchwardens should be appointed within two months after consecration of the church (8 & 9 Vict. c. 70, §§ 6, 7). Consecration fees amount to between 20*l.* and 30*l.*, according to the length of the proceedings and other circumstances, and are payable to the legal authorities of the diocese.

Temporary Churches.

When sufficient funds to build a permanent church cannot speedily be obtained, it is better to purchase or

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hire a temporary building, than to leave the people without the means of public worship. The cost of purchasing an iron church, completely fitted up, but without warming apparatus, is from 30*s.* to 40*s.* a sitting. An iron church has many advantages. Unlike a building of stone or brick, it may be so constructed as not to become attached to the freehold, and is then removable, at a moderate cost, to another site. It may, therefore, be erected upon leasehold land; and although removable, and in that sense temporary, it may, if preserved with care, last above half a century.

Churches of wood or iron are subject to the special supervision of the Board of Works.

The promoters of Church Extension should fully understand that they may proceed either under the New Parishes Acts, or under the Church Building Acts which are still in force.

It is only under the New Parishes Acts that a district can be assigned previously to the consecration of a church.

APPENDIX H.—No. 3.

AS TO CURATES IN SOLE CHARGE.

QUESTIONS have been so frequently put to the author of the present book relative to the position and rights of stipendiary curates in sole charge, that it has been thought desirable to insert here a few remarks upon this subject. There is, however, very little authority to be found bearing upon it.

It was held in the case of Hubbard *v.* Penrice (2 Stra.

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1245) that a curate stands in the place of the parson for the purpose of nominating one churchwarden; and in the case of Pinder *v.* Barr (4 E. & B. 105) it was said by Coleridge, J., that a curate appointed by the bishop during the suspension of the incumbent for misconduct, is "both actually and lawfully for the time being the pastor of the parish;" and as such he was held to be the proper person to appoint the parish clerk, although the terms of his license authorized him to perform only the ecclesiastical duties belonging to the office of a stipendiary curate.

It would seem, therefore, to the author, that where an incumbent is non-resident, a stipendiary curate may represent him in his absence, so far as the parishioners are concerned, for all temporary purposes. Thus, he would have all the incumbent's rights in relation to the cure of souls in general, the ordering of the services, the election of churchwardens, the right to preside at vestries, the control of the bells, organ, singing, etc.

But his position will apparently be affected according as the non-residence of the incumbent is voluntary or compulsory.

In the former case he will be amenable to the directions of the incumbent in his absence, and must obey them. This, however, is a matter touching his relation to the incumbent only, and not to the body of the parishioners, who would not be entitled to object to any *legitimate* exercise by him of the incumbent's authority. It would not be advisable for a curate, in such circumstances, to make any permanent appointment of a parish clerk, organist, etc., without the incumbent's consent.

Where the non-residence of the incumbent is compulsory, the curate becomes to all intents and purposes the parson for the time being, and may, and indeed should, exercise and perform all the rights and duties of the incumbent.

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The above remarks do not, of course, apply to any rights and duties which may devolve upon the incumbent in any other capacity than that of parson of the parish, or to any curate not duly licensed by the bishop to officiate during the non-residence of the incumbent, and merely acting in his temporary absence.

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Appendix I.

ECCLESIASTICAL COMMISSIONERS FOR ENGLAND.

Regulations respecting Grants out of the Common Fund.
[March, 1869.]

I. The Commissioners are prepared to endow a limited number of new Churches to which Districts shall have been legally assigned since the 1st of March, 1864, containing in each case a population of not less than 4,000 persons, and not being situated within the limits of the ancient parish of Manchester,[1] provided that the formation of any such District shall not involve the reduction below 4,000 persons of the population of any other Benefice receiving a Grant from the Commissioners on the ground of population; the Grants to Churches of this character which may be in public patronage [2] to be made, to the extent of £200 a-year, unconditionally, and to those in private patronage, to the extent of £100 a-year, upon condition that

[1] Having regard to the provisions of "The Parish of Manchester Division Act," by which a special fund is created for the endowment and augmentation of cures within the parish of Manchester, Part I. will be considered as inapplicable to that parish.

[2] Videlicet:—In the patronage of Her Majesty, either in right of the Crown or of the Duchy of Lancaster, of the Duke of Cornwall, of any Archbishop or Bishop, of any Dean and Chapter, Dean, Archdeacon, Prebendary, or other dignitary or officer in any Cathedral or Collegiate Church, or of any Rector, Vicar, or Perpetual Curate, as such, or of a body of trustees not possessing power to sell or transfer the right of presentation.

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an Endowment of equal value be provided from non-ecclesiastical sources.

No application will be eligible for consideration under this Regulation, unless and until a Church, in which at least one half of the sittings are free, shall have been built and consecrated, and a separate District shall have been legally assigned thereto.

II. The Commissioners are further prepared to receive, on or before the 30th of November, 1869, offers of Benefactions of not less than £100 each in value towards making better provision for the cure of souls, with a view to such offers being met by the Board with Grants during the spring of 1870.

The distribution of these last-mentioned Grants will be made subject to the following general regulations:—

1. A Benefaction from trustees, or from any Diocesan or other society or body of contributors, as well as from any individual, whether such Benefaction consist of money, land, house, site for a house, tithe, or rentcharge, any or all, may be met by a Grant from the Commissioners; but neither a Grant from Queen Anne's Bounty, nor a Benefaction already met by such a Grant, nor money borrowed of Queen Anne's Bounty, nor a charge upon the revenues of any Ecclesiastical Corporation aggregate or sole (*except*[1] *as under mentioned*), nor any endowment, bequest, gift, or benefaction already secured to a Benefice or Church, can be met by a Grant from the Commissioners.

2. The Grants will consist of perpetual annuities in all cases except those in which with a view to the provision of Parsonage Houses, or for other reasons, it may appear to the Commissioners to be especially desirable that capital should be voted.

[1] Where the incumbent of a benefice is willing to surrender a portion of the endowment of such benefice towards augmenting the income of a District Church, such surrender will be treated as a benefaction of a sum equal to seven years' purchase of the net annual income so surrendered.

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3. No single Benefice or proposed District will be eligible to receive a Grant of a larger sum than 50*l.* per annum, or of 1,500*l.* in capital, and in no case will the Grant exceed in value the Benefaction offered,—the Grant being estimated as worth thirty years' purchase.

4. Districts *proposed*, but the formation of which shall not have been legally completed on or before the 1st January, 1870, will not be eligible to receive Grants, except in cases where the amount of Benefaction offered would, with the Commissioners' Grant, be sufficient to provide an income of 150*l.* per annum.

5. In selecting cases, priority will be given to those which, having regard to income, population, and area, or any of them, shall appear to be the most necessitous.

6. A Benefice held contrary to the provisions of the Plurality Acts as applicable to new Incumbents will not be considered eligible for a Grant.

7. A Benefice which has received a Grant is not disqualified, on the offer of a further Benefaction, from competing for a further Grant in any subsequent year.

8. The Benefaction, if in cash, and the Grant, if it consist of capital, may, in the case of Benefices existing on the 1st January, 1870, with the consent of the Commissioners and the Bishop of the Diocese be laid out in the purchase of land, or tithe rentcharge, within the Parish or District, or in the purchase or erection of a Parsonage House.

9. Every application must contain a specific offer of a Benefaction, and must reach the Commissioners' Office *on or before the 30th of November*, 1869, in order to render it eligible to compete for a Grant in the Spring of 1870; and in the event of a Grant being made to a Benefice, the Benefaction, if in money, must be paid to the Commissioners on or before the 1st of June following.

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The foregoing Regulations, so far as they relate to division I., will continue in force to the 1st of March, 1870; and so far as they relate to division II., to the 30th of November, 1869.

All communications should be addressed to the Secretary, Ecclesiastical Commission, 10, Whitehall Place, London, S.W., and the postage prepaid.

By order of the Board,
JAMES J. CHALK,
Secretary.

N.B.—The applications under these Regulations need not be in any particular form.

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Appendix K.—No. 1.

32 & 33 Vict. c. 110.

An Act for Amending the Charitable Trusts Acts.[1]
[11th August, 1869.]

Whereas doubts have arisen respecting the construction of some provisions of the Charitable Trusts Acts, and it is expedient to remove such doubts and otherwise to amend those Acts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament, and by the authority of the same, as follows:

Preliminary.

I. This Act may be cited as "The Charitable Trusts Act, 1869." Short title.

II. This Act shall not extend to *Scotland* or *Ireland*. Extent of Act.

III. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the Charitable Trusts Act, 1853, the Charitable Trusts Amendment Act, 1855, and the Charitable Trusts Act, 1860, and the Act of the Session of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter one hundred and twelve, "for establishing the Act to be construed with 16 & 17 Vict. c. 137, 18 & 19 Vict. c. 124, 23 & 24 Vict. c. 136, 25 & 26 Vict. c. 112.

[1] This Act was passed at too late a period in the session to be inserted in the proper place in the present edition of this book.

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jurisdiction of the Charity Commissioners in certain cases" (which may be cited as the Charitable Trusts Act, 1862), and those Acts, together with this Act, may be cited as the Charitable Trusts Acts, 1853 to 1869.

Amendment of sec. 3 of 23 & 24 Vict. c. 136.

IV. A notice under section 3 of the Charitable Trusts Act, 1860, need not be sent by the Board of Charity Commissioners for *England* and *Wales* to any trustee or administrator of a charity who has been party or privy to the application to the Board upon which they exercise their jurisdiction.

Mode of application to Board.

V. An application to the Board of Charity Commissioners for *England* and *Wales*, for the purposes of the Charitable Trusts Acts, 1853 to 1869, when made by the trustees or persons acting in the administration of the charity, may be made in writing signed by any person authorized in that behalf by a resolution passed by a majority of those trustees or persons who are present at a meeting of their body duly constituted, and vote on the question.

Powers of Board on application.

VI. The Board shall be deemed to have and to have always had power in any order made upon an application to them, for the exercise of their jurisdiction under the Charitable Trusts Acts, 1853 to 1869, to insert in the order any incidental provisions which they think expedient for carrying into effect the substantial objects of the application, and which they would have had power to insert if such provisions had been included in the application.

Notice of order. 23 & 24 Vict. c. 136 s. 6.

VII. Nothing in the Charitable Trusts Acts, 1853 to 1869, shall be deemed to require or to have required the Board, upon modifying a proposed order in manner provided by section 6 of the Charitable Trusts Act, 1860, after the publication thereof, to give public notice of such modified order in the manner provided by that section with respect to the order originally proposed, unless they think further notice desirable.

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Discharge of order of Board for irregularity

VIII. The Board shall be deemed to have and to have always had power with or without any application to discharge, within twelve months after an order is made by them, the whole or any part of any order appearing to have been made by them by mistake or on misrepresentation, or otherwise than in conformity with the Charitable Trusts Acts, 1853 to 1869.

Every order made by the Board, in exercising their jurisdiction under the Charitable Trusts Acts, 1853 to 1869, shall, until discharged or varied by the Board or by the Court of Chancery on appeal under section 8 of the Charitable Trusts Act, 1860, have effect according to its tenor.

Every order of the Board shall, subject to all powers which the Court of Chancery has to discharge or vary it under section 8 of the Charitable Trusts Act, 1860, and subject to the power of the Board to discharge it wholly or partially for the causes mentioned in this section, be deemed to have been duly and formally made, and no objection thereto on the ground only of irregularity or informality shall be entertained.

Employment of persons to prepare and defend scheme.

IX. The Board, if they think it desirable, where the gross annual income of a charity is in their opinion sufficient to bear the expense, may, upon the application of the trustees or of any other person or persons entitled to apply to them in that behalf, employ or may authorize the trustees or persons acting in the administration of such charity to employ skilled and competent persons to prepare any scheme, order, statement, or other proceeding for the purposes of the Charitable Trusts Acts, 1853 to 1869, with respect to such charity, or to make or assist in any survey or local inquiry with reference thereto, and may order the costs incurred under this section or upon any inquiry by an inspector, or in consequence of the employment of any person to appear on behalf of the respondent upon any appeal against any scheme or order, to be provided in the

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same manner as if they were costs of a transaction mentioned in section 36 of the Charitable Trusts Act, 1855.

Appeals under 23 & 24 Vict. c. 136.

X. A petition to the Court of Chancery under section 8 of the Charitable Trusts Act, 1860, may be presented in the case of all charities by the same persons only as in the case of a charity the gross annual income of which does not exceed fifty pounds.

Service of Attorney-General by appellant under sect. 8 of 23 & 24 Vict. c. 136 s. 8.

XI. A petition shall not be presented to the Court of Chancery by any person under section 8 of the Charitable Trusts Act, 1860, before the expiration of twenty-one days after written notice under the hand of the appellant of his intention to present such petition has been served on the Attorney-General by delivering the same to the solicitor who acts for him in *ex officio* proceedings relating to charities.

Legal power of majority of trustees to deal with charity estates.

XII. Where the trustees or persons acting in the administration of any charity have power to determine on any sale, exchange, partition, morgage, lease, or other disposition of any property of the charity, a majority of those trustees or persons who are present at a meeting of their body duly constituted, and vote on the question, shall have and be deemed to have always had full power to execute and do all such assurances, acts, and things as may be requisite for carrying any such sale, exchange, partition, mortgage, lease, or disposition into effect, and all such assurances, acts, and things shall have the same effect as if they were respectively executed and done by all such trustees or persons for the time being and by the official trustee of charity lands.

Legal proceedings by trustees of charities for protection of charity property, etc.

XIII. The majority of the trustees of any charity, if authorized by the Board, may institute and maintain any action, suit, petition, or other proceeding in the same manner in all respects as if they were the sole trustees of the charity.

Where the trustees or the majority of the trustees

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of any charity institute and maintain any action, suit, petition, or other proceeding under the authority of the Board, such action, suit, petition, or other proceeding shall not abate or become discontinued or of no effect by reason of the death or removal from office of any of the trustees, or of the addition of any new trustee, but shall continue and have effect for and against the trustees for the time being of the charity, in the same manner as if they were actually named therein.

Application by exempted charities to have benefit of Act. See 16 & 17 Vict. c. 137, s. 63.

XIV. Either the trustees or the persons acting in the administration of any charity, exempted from the operation of the Charitable Trusts Acts, 1853 to 1869, may apply to the Board to have the said Acts or any provisions thereof specified in the application extended to such charity: Such application shall be made by such of the said trustees or persons as having regard to the value of the charity might under the provisions of the said Acts, if the charity were not exempted therefrom, make an application for a scheme to any judge or court or to the Board, and shall be made in the same manner and according to the same regulations as such application.

On any such application the Board may make an order directing that the said Acts or any provisions of them specified in the application shall extend, and such Acts or provisions shall thereupon after the date of the order extend to such charity in the same manner as if it were not exempted therefrom.

Before making any order under this section the Board shall cause such notices of the proposed order to be given as by section 8 of the Charitable Trusts Act, 1860, as amended by this Act, and by section 6 of the same Act, are required to be given before the making of an order for establishing a scheme.

Extension of part of Acts to

XV. So much of the Charitable Trusts Acts, 1853 to 1869, as authorizes and relates to orders of the Board

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registered places of religious worship.

for the appointment or removal of trustees of a charity, or for or relating to the vesting of any real or personal estate belonging thereto, or for the establishment of any scheme for the administration of any charity, shall extend to buildings registered as places of meeting for religious worship with the Registrar-General of Births, Deaths, or Marriages in *England*, and *bona fide* used as places of meeting for religious worship: Provided that no such order shall be made except upon the application of the trustees or persons acting in the administration of the charity, made in manner provided by section 4 of the Charitable Trusts Act, 1860, or by this Act. Save as provided by this section, such buildings shall continue exempted from the Charitable Trusts Acts, 1853 to 1869.

Treasury to fix scale of fees.

XVI. The Lords Commissioners of Her Majesty's Treasury may from time to time prescribe a scale of fees to be charged for any business done by the Board under this or any other Act, and may direct whether the same shall be imposed by stamps or otherwise, and by whom and in what manner the same shall be collected, accounted for, and appropriated; and before any such fees shall be taken or received by the said Charity Commissioners every such scale of fees shall be published in the *London Gazette*. The scale of fees shall be laid before both Houses of Parliament within thirty days after the same has been so prescribed, if Parliament is then sitting; and if not, within thirty days after the then next meeting of Parliament; and if any such scale shall be disapproved of by both Houses of Parliament within one month after the same shall have been so laid before Parliament, such fees or such parts thereof as shall be disapproved of shall not be charged by the Board.

Scale to be laid before Parliament.

Repeal.

XVII. The enactments described in the schedule to this Act are hereby repealed; Provided that,

(1.) This repeal shall not affect anything already done

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or suffered, or any right acquired or order made, under such enactments:

(2.) Any proceedings already commenced under the enactments hereby repealed shall be proceeded with in the same manner as if this repeal had not been made.

SCHEDULE.

Date.	Title.	
16 & 17 Vict. c. 137.	An Act for the better administration of Charitable Trusts -	In part; namely, section sixty-three.
23 & 24 Vict. c. 136.	An Act to amend the law relating to the administration of Endowed Charities - -	In part; namely, section sixteen.

APPENDIX K.—No. 2.

THE ENDOWED SCHOOLS ACT, 1869,

32 & 33 VICT. c. 56.

A SHORT notice of this Act appears desirable, but it is too diffuse and complex to be considered at length in a work devoted to the Clergy.

By it Commissioners are appointed (§ 31) to frame schemes for the approval of Parliament (§ 41) for the reorganization of Endowed Schools, and express provision is made for securing freedom of religious education (§§ 15, 16) in schools of other than a denominational character (§ 19); the masters of such schools are not to be required to be in holy orders (§ 18), and their

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governing bodies are not to be disqualified on religious grounds (§ 19). The jurisdiction of the ordinary as to the licensing of masters in Endowed Schools is to be abolished (§ 21). Existing interests are saved from the application of the Act (§ 14), which does not extend in general to schools supported by voluntary contributions, or in receipt of parliamentary grants, or where the governing body has a discretion as to the purposes to which the funds are to be applied, or to schools for the education of ministers or persons of any particular denomination, or of choristers (§ 8).

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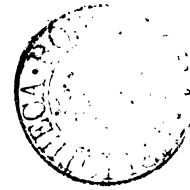

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